No. 88-2140

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In The

Supreme Court of the United States

October Term , 1988

GLEN OSWIN HANCOCK

"Petitioner"

v.

City of Davenport
An Iowa Municipal Corp.,

ET AL.

"Respondent"

PETITION FOR WRIT OF CERTIORARI TO THE IOWA COURT OF APPEALS

—

GLEN O. HANCOCK
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QUESTIONS PRESENTED

[A] Whether established violations of constitutional rights that result in a taking, illegally enacted with a preponderance of conspiritorial evidence, requires full compensation of valuation attributed and accrued to a National Historic Landmark, conjoined to a sitting President of the United States?

[B] Whether a totality of the circumstances review of a civil case, with allegations of community prejudice, must require at the trial stage, procedural protective measures analogous to a criminal prosecution in the fielding of an impartial jury, and if safeguards against attorney default/ impropriety must submit to a similar test?

[C] Whether a defendant city, which is a county seat, can draw upon local taxpayers for jury empanelment, when the issues litigated are portrayed with contrived negativity by impacted conflicting and powerful special interests (media), and the `physical' presence of a large and misperceived
controversy impacts and infects the jury pool personally and directly?

[D] Whether a sitting President's former Home and archeologically irreplaceable Historic Landmark, privately owned, adjacent to a major defense facility, transcends vested
rights through the administrative empowerment of Congressional and Executive Branch environmental intent, will the State, a county or a city, in complying

with and by virtue of the enablement of a municipal ordinance that effects an action repugnant to that intent, be liable for damages, and will the Federal government spiritually be enjoined in that action, requiring notice by the moving [in this case the city] party ?

[E] Is the probability of Executive Branch `recognition' subject to judicial review of the `nature' of the recognition plausibly present in a case that possesses politically sensitive and national security ramifications?

[F] Whether federalistic comity considerations will grants the police power [building inspector] or the local judiciate,the power and the right, to supplant ' federal intent in nationally significant environmental matters, either by inadequate proficiency, or procedural abuse,[inadequate discovery/misplaced jurisdiction]?

The list of Parties in this suit:

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[1] City of Davenport, an Iowa Municipal Corporation, and Alderman Roger Blecher, Alderman Florian Keen, Alderman Kenneth Welzenbach, Alderman Donald Costello, Alderman John Haldeman, Alderman Karl Rhomberg, Alderman Larry d'Autermeont, Alderman Robert Bina, Bruce Romer, James Conway, and Phillip Testa, Respondants.

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REPORT OF OPINIONS BELOW

Hancock v City of Davenport 392 NW2d 472

Hancock v City of Davenport ____ NW2d___

(Iowa App. 1988) [app.1-15]

JURISDICTION

The order of the Iowa Supreme Court denying Application for Further Review was entered March 3, 1989 regarding Scott County District Court case number 70078 and Iowa Supreme Court number 87-01022.(app.20,21) A Procedendo was entered March 10, 1989 and Pro Se Petitioner files this Writ of Certiorari timely pursuant to 28 USC 2101 (c) and Supreme Court Rule 20 (4). The jurisdiction of this court rests on 28 U.S.C. 1257 (2) & (3).

STATEMENT OF THE CASE:

Petitioner pursuant to section 1983 Civil rights action, sought damages[2] for established due process violations. (see Hancock v City Council of Davenport 392

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[2] Petitioner appealed to the state capital appellate court, and the judgement was affirmed.(app:1-15) Pursuant to federally mandated civil rights laws, Petitioner now motions for writ of certiorari to the Iowa Court of Appeals. There is required to be just compensation for ALL takings when government appropriates private property, allegedly for public use. Amendment V, and XIV, US Const. First English Evangelical Lutheran Church v Los Angeles County, 107 S.Ct 2378 (1987) San Diego Gas and Electric Co v San Diego, 450 US 621 (BRENNAN J. dissent), Pumpelly v Green Bay, 13 Wall, 166, (1872), Kimball Laundry Co. v United States, 338 US 1, (1949) Nollan v California Coastal Commission, 107 S.Ct. 3141 (1987)

In this case, the 'public use' is for a parking lot, or illegal title grab, for support of a rival project across the street from the Vale hotel. Here, "[t]here is heightened risk that the purpose" was "[a]voidance of the compensation requirement, rather than the state police power objective. Nollan v California Coastal Commission, 107 S.Ct. 3141,3150

NW2d 472 Iowa 1986) A jury trial on damages transpired before a biased community and only attorneys fees (section 1988 Civil rights) were awarded (app:50,51) That public-private project is sponsored by the power structure of the city of Davenport and prominent local business people. (app:185-190 71-89)

Petitioner's hotel as a tourist attraction has goodwill; the developmental delay caused by the city's efforts to misappropriate his land, and quash feasibility procedure, allowed the untimely loss of recoup of investment in a sitting President's former home. Metro Bank v St Louis, 149 US 436,446, Pennsylvania Coal Co. v Mahon, 260 US 393 Alamota Farmer's Elevator & Warehouse Co. v United States, 409 US 470 United States v Causby, 328 US 256 (1946), Kimball

Laundry supra United States v Dickinson, 331 US 745.

The court below applied State law which was preempted by Congressional and the Executive Branch intent. This mistake[3] in choice of law actively harmed Petitioner's rights. Milwaukee v Illinois, 451 US 304, Palmore v US, 411 US 389, National Historic Preservation Act, 16 USC 470 et seq., 36, CFR Sec 800.10 (c) Sheppard v Maxwell, 384 US 333, Irvin v Dowd, 366 US 717

Alleging a `public purpose' nuisance abatement, the city staff and elected

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[3] Eminent domain law is in hopeless confusion as declared by every law review writer. see Williamson County Regional Planning v Hamilton Bank, 105 S.Ct.3100,3122 n.15, n.17, First English, supra, (dissent) 2399 n.17 There are as many views as their are circuits. Historic Preservation is also grossly underdefined throughout the circuits.

officials, placed the landowner in peril[4] of having his National landmark [placed into the Register by Petitioner in 1979 (app:69,70) demolished in a matter of days. (app:90-97) This precipitate action resulted in an immediate suit to prevent

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[4] The city ordinance and state common law of nuisance were asserted to justify this unconstitutional action. The Iowa Supreme Court intervened for Petitioner on a lack of notice `due process' rationale. Hancock v City Council of Davenport, 392 NW 2d 472 (1986)

Adjacent and prominent business entities, owned by the town's richest Bank, and Real Estate Company, allegedly conspired together with their employee, a Downtown coordinator-James Conway, to enact either a demolition or a land grab manuever. These parties are financially impacted directly by the existence of Petitioner's landmark building. James Conway, acted in concert with high city concert with high city officials and the bank to defraud. City councilmen, upon the advice of the city attorney, Mike Meloy, quasi-judicially carried out the Scheme, acting within an atmosphere of a flood of negative publicity [portrayed by the largest (downtown) newspaper's conflicting interest (app:149,150 213-215)] and misperception convincing the townspeople that the Vale hotel was a nuisance.

destruction of the building.

Petitioner brought a civil rights suit, but the suborned attorneys failed to protect those rights. One month before the first Supreme Court decision, in 1986 there was repealed a law which ever since Iowa had become a state, prevented city taxpayers from sitting on a jury when the city was a party. (app:31-33)

The petitioner moved for a change of venue under IRCP 167, and denied under IRCP 168 (d), (app:41-43 see 211) after

much publicity.[5]

Here the matter rests, with Petitioner's prospective future development and return on investment unsettled to this day.

The value of the early home of the sitting President where the 'Great Communicator' began his career is lost forever, but Petitioner deserves recompense for his efforts to preserve and restore this landmark.[6]

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[5] A jury verdict strongly suggests a compromise resulted, between those wanting to favor the city by denying the Petitioner any relief, and those who rightly thought a taking had occurred. (app:216)

In turn, this process resulted in jurors' swapping prevention of demolition in exchange for awarding a paltry sum, enough to pay only the attorneys' fees, and denying all compensation for the taking or litigation's delays. Repugnancy to the V and XIV Amendments is apparent.

[6] The court below limited the remedy by applying to the same lawsuit conflicting rulings of other courts which

Petitioner has argued above that the Iowa Supreme Court applied an erroneous Choice of Law and legal principles in ascertaining the existence and extent of `takings' and what remedy must follow.

ARGUMENT AND AUTHORITIES

[A] The pro se litigant's prolix and detailed recitation of facts did not obscure his good claim. Petitioner is guaranteed the rights of common law bestowed upon every man and woman of this nation. see Hughes v Rowe, 449 US 5,12-13,1980

In the case of this Presidential landmark, the police power illegally enforced by the city, under the heralded

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have passed upon similar matters. Thus, this case is affected more than any other by those conflicts, which should be resolved by this court in order to establish a uniform approach to eminent domain and protection of Nationally important `environmental' legacy.

ruse of "safety regulations" effected a result that was unduly oppressive to Petitioner and side stepped non distinct procedures in the State (see Hancock v City of Davenport, 392 NW2d, 472,479) "[g]ive the parties guidance on procedural and substantive matters."]

Petitioner submitted preliminary plans and structural reports in court: see Hancock at 474 ([t]he main bearings of the building are structurally sound.) Due process violations of the Petitioner's constitutional rights, directly resulted in a subsequent and compensable taking of an "unprecedented" valuation of property. (app:193-196)

This unconstitutional procedure resulted in an "unnecessary delay in obtaining approval of it's development plan, "Williamson Co. Regional Planning v

Hamilton Bank, 105 S.Ct.3108,at 3126.

The Fifth Amendment provides compensation to landowners and applies to the states through the Fourteenth Amendment. It is not a "speculative" determination of investment backed expectations [Historical Preservation] accounting patronage of a Presidential "legacy". A right essentially involved in the record allows review even though such rights are not expressly asserted below. Manhattan Life Ins. v Cohen, 234 US 123,134,: Tilt v Kelsey, 270 US 43,51.[7]

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[7] The Constitution does not embody any specific procedure..."[t]he Fifth Amendment expresses a principle of fairness and not a technical rule of procedure...regarding `cause of action' - when they are born,...and when they die." United States v Dickinson, 331 US 745,748. It would be a very curious and unsatisfactory result if....the government refrains from conversion of real property to the uses of the public (app:107-110) it can destroy it's value entirely, can inflict...permanent injury ...subject it to total destruction without making any

Petitioner's property was condemned twice (app:97) "When the government chooses not to condemn...but bring about a taking by a continuing PROCESS[8] (emp.ad.)...., The taking should not be subjected to premature litigaton." US v Dickinson, supra at 749[9]

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compensation...it is not taken for the public use. (***)" First English Evangelical Luth. Church v Los Angeles Co. 107 S.Ct. 2378,2387, San Diego Gas and Electric Co. v San Diego 450 US 651-52.

[8] "It would be unfair to deny compensation" If a "going concern" or "goodwill intangible" evaluation of real property "which is capable of transfer from owner to owner", in specialty properties "of a kind seldom exchanged" "taken" not in fee but for an indeterminate period" imposes major negative losses, as clearly has occurred here. The temporary interruption as opposed to the final severance of occupanc, so greatly narrows the range of alternatives open to the condemnee that it substantially increases condemnors obligation to him. Kimball Laundry v United States 338 US 1,11,5,6,15.

[9] The chilling effect of illegal condemnation halted development and marketing of the building dead in it's

"[T]he Constitution measures a taking

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tracks in 1984. The State Court erred regarding Petitioner's claims for compensation on the goodwill quantum valebant when applied to conjointment with a sitting President. (app:13,14) The courts have recognized that goodwill should be determined in light of the particular facts and circumstances of the situation. Miller v Commissioner, 333 F2d. 400,404, see 38 CJS Goodwill Section 6,p.954; 85 CJS Taxation Sec. 1175. see Solitron Devices Inc. 80 TC at 17-18, Justice Story's definition of goodwill is -"the advantage or benefit ...acquired by an establishment beyond the mere value of the capitol, stock, funds, or property employed therein...on account of it's local position, COMMON CELEBRITY (emp.ad.) ...or from accidental circumstances or necessity, or even from ANCIENT PARTIALITIES (emp.ad.), or prejudices." Metropolitan Bank v St. Louis Dispatch Co., 149 US 436, 446, Although the concepts of goodwill and going concern are so closely related, the absence of one does not preclude the existence of the other. "Going concern" value is separate and distinct from `Goodwill'; in Concord Control Inc. v Commissioner, 615 F2d. 1153,1154-55 "Going concern" is the increase in value of assets due to their existence as an integral part of an ongoing business. The `business' of real estate brokering manifests a multiplicity of practices, investment backed expectations, and legitimate forms.

of property not by what a State says, or by what it intends, but by what it does.(***) It is only logical, then, that the government action other than the acquisition of title, occupancy, or physical invasion can be a `taking' and therefore a de facto exercise of the power of eminent domain,[10] where the effects

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[10] Petitioner gave good faith notice notice (app:62-68) to the city specifically listing "variances" and indicating a reasonable and flexible approach AFTER, a consensus could be made as to the viability of restoring the Historical landmark; "[t]he finality requirement is concerned with whether the initial decisionmaker has arrived at a definitive position on the issue that inflicts an actual concrete injury (app:44-46,110) Williamson supra at 3120. "Rules developed for the simple situation in which all owners interests in the property [good will] (br ad) have been irrevocably severed should not be forced to fit the more complex consequences of the piecemeal taking of successive short term interests. Such takings may involve compensable elements that in the nature of things are not present where the whole is taken." Kimball Laundry supra at 338 US 1,22

completely deprive the owner of all or MOST[11] of his INTEREST[12] (emp. ad.) in the property. (***)" San Diego Gas supra at 653.

The "Plains Georgia" phenomenon historically demonstrates the significance of massive public acknowledgement, and vendibility[13] of Presidential "legacy",

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[11] "...[t]emporary regulatory takings which, as here, deny a land owner all use of his property are not different in kind from permanent takings for which the Constitution clearly requires compensation." First English, supra at 2388.

[12] The loss of public relations value to the building, land, and owner are astronomical when the extrapolated effect of the international daily coverage a President gains is factored in, whether the President acknowledges the property,(app:217) or not.

[13] "When the part not taken is left in such shape or condition as to be in itself of less value than before, the owner is entitled to additional damages on that account. (***)" see US v Dickinson, supra at 750

when applied as accruable value in reasonable investment backed expectations [14] "A Landowner is entitled to bring an action in inverse condemnation[15] as a result of the self-executing character of the constitutional provision with respect to compensation."[16] First English, supra at

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[14] President Nixon, Ford, and Carter's "out of office" national and international news coverage pales in comparison to a sitting chief executive. see Mandelker, Investment Backed Expectations: Is There A Taking, 31 Wash.UJ, Urb, Contemp. Law,3,6

[15] The State court has attempted to estopp that right. "A landowner...may not recover damages for the time...that the regulation constitutes a taking...We disagree, and conclude...the US Constitution would require compensation for that period." First English, supra at 2380-81

[16] It contradicts the record alleging that Petitioner raised the issue of inverse condemnation "specifically for the first time on appeal" (app:202). The question was presented primarily in appeal to the Iowa Supreme Court [68966] and denied jurisdiction without prejudice, and an original section 1983 action was dismissed. Hancock, supra at 479

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Federal issues,[17] finally decided by the highest court in the State in which a decision could be had, will survive regardless of the outcome of future state court proceedings[18] [jurisdiction of a Presidential home inter alia]. Cox

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(app:180,181)

[17] "...[t]he fact that federal substantive interests are at stake is a factor militating, in some degree, against treating the state court judgment as conclusive." Restatement (Second) Judgments, Sec. 86 (b). Statutory exception has left open the implication of an exception to the rule of claim preclusion. Id. (d) see 42 USC 1983, Congressional [AND Executive Branch] br.ad. "intent" regarding Preservation and Federal protection is clear. 36 CFR 470, (6&7), 36 Fed Reg. 8921, 36 CFR Sec. 800.10.

[18] Congress has recognized that damages to the owner is assessed not only for the value of the part taken but also "for any injury to the part not taken." see Dickinson, supra at 751.

Broadcasting Corp. v Cohn, 420 US 469,480 (1975)

In this case "...[i]nvalidation of the regulation cannot cure the taking", and, "[t]he restriction on the use of the property would have to remain in effect for a significant percentage of the property's[19] useful life." First English (dissent) at 2394.

This Court did not decide "...[w]hether the ordinance at issue actually denied appellant all use of his property, or whether the county might avoid the conclusion that a compensable taking had

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[19] President Reagan will never again be in office. Petitioner lost of "common celebrity" accrual of an 'in office' public recognition value, totally and permanently. Individual enjoyment of property is the protected constitutional command. It is that "vested ownership" that gives the right, not the duty to develop, as well as the right not to develop.

occurred by establishing that all use was INSULATED[20] (emp.ad.) as a part of the State's authority[21] to enact safety

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[20] First English cites Hadacheck v Sebastian, 239 US 394. Hadacheck lends no principled support to a broad conception of the police power divorced from it's anti-nuisance rationale. Instead diminuation of value has here the same role that it does in tort. It is relevant only on damages once liability is established by some independent criterion; "...[c]ourts of equity are concerned with protecting the operator of a lawfully, albeit noxious, business from the result of a knowing and willful encroachment by others near his business." Spur Industries Inc. v Del E. Webb Development Co., 494 P2d. 700,706,707. Petitioner asserts that the original contention of "nuisance" or "noxious" quality of the landmark pursued by the defendants was feigned. N o police power rationale obtaied. (see Hancock, supra at 477 "....does not contend....emergency". "The form of the remedy did not qualify the right." Jacobs v United States 290 US 13 at 16. Damages are the only remedy.

[21] If the evidence favorable to the plaintiff makes out a prima facia case, even though the trial court would be forced to set aside a jury verdict for the plaintiff and grant a new trial (app:132-155) [motion denied] see (app:47-49,178-180,193-94) [Judge Briles] based on it's view of all the evidence. Wilkerson v

regulations." First English supra at 2385

"There may be some situations...the temporary existence of a regulation has such severe consequences that invalidation or repeal will not mitigate[22] the damage[23]

McCarthy, 336 US 53,57.

[22] The property interest the state has taken is a negative covenant to eliminate or restrict the use of the property. A "Presidential" landmark of this stature cannot be subjugated to "market" comparisons and discrepancies, nor is the PR value easily ascertained. Generally, monuments of this nature are not for sale.

[23] "The payment of just compensation serves to place the landowner in the same position monetarily as he would have occupied if his property had not ben taken" Almota Farmers Elevator and Warehouse Co. v United States, 409 US 470.473-474, (1973) and cases cited, United States v Reynolds, 397 US 14,1 "Truly,...[t]he applicability of express constitutional guarantees is not a matter to be determined on the basis of policy judgments made by the legislative, executive, or judicial branches. Nor can the vindication of those rights depend on the expense in doing so." Watson v Memphis 373 US 526,537-538 Exemplary damages are the preventive safeguard.

enough to remove the taking label."[24] First English supra at 2393

An examination of the difference in value of the property before and after the invalid regulation was enacted leads to the question: To what extent will the government assume responsibility[25] for

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[24] "A regulatory program that adversely affects property values does not constitute a taking unless it destroys a major portion of the property's value.(***)" First English supra at 2389 "The determination of a taking is a question of degree and therefore cannot be disposed of by general propositions." Pennsylvania Coal v Mahon, 260 US 393, 413-415.

[25] San Diego Gas, supra at 661,n.26 states: "[i]f a policeman must know the constitution then why not a planner? (app:183-84) [it is incredible Conway, a `downtown coordinator' denies these studies; this is another affirmative link to special interest] (app:71,72-77,170-173,117-122) "In any event, one may wonder as an empirical matter whether the threat of just compensation will greatly impede the efforts of planners. "Id. This observation addresses the heart of the internal process of administrative entities of local government, and in the land-use context, a "check and balance"

property taken from a citizen and judicially decree it is for the "public welfare", when the facts show, the owner did his civic duty, and through preservation, escalated the very substance of community civic welfare?[26]

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oriented policy is consistent with the intent of civil rights. It will precedent a fair result if the "policy and custom" predicted by the dissenters [in First English 2399 n.17], complies with constitutional safeguards; citys will govern with checks and balances, as the federal government must, and be required in policy matters, to insure fair and equal protection of the law.

[26] The Full compensation version of the Before-After Valuation Method suits the proposition that: "...[t]he owners loss not the takers gain which is the measure of the value taken", and "It is axiomatic that the V Amendment's just compensation provision is designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice should be borne by the public as a whole.(***)" First English supra at 2388, see Columbia Journal of Environmental Law, Vol 14:247

This case reveales that `circumstances' present `specialty properties' for consideration under strained reasonings when applied to current throroms of appraisment: "Additional rules of evaluation may need to be developed." Kimball Laundry, supra at 577

[B] The jury foreman, made an express statement that: "[o]ur decision was not a victory for Mr. Hancock...the city had a good defense, but we felt that Mr. Hancock's constitutional rights were violated, he should be awarded just a small portion of his attorneys fees and only that." (following:..."[n]one of the jury members[27] felt it was a victory for

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[27] Petitioner's claim, inter alia, is that the jury `ad hoc', decided the case on presumed evidence not presented in court. The false presumption was manifested in the form of a `hyped' "nuisance"; growing community prejudice resulted in the misperceptions of a large building in the middle of their downtown,

him or we never would have COME to that conclusion..." And "[w]e would have voted to have it demolished." (app:216,149,198-200) This statement reveals that there was sharp conflict between the compensation faction on the jury and a `no taking' faction, strongly indicating a compromise

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and harmful inference of responsibility was imputed to Petitioner, who was transformed into a public figure by the media with regard to that particular controversy. see McDowell v Paiewonsky, 769,F2d,942,947. Absence of `smoking guns and bloody shirts' in this CIVIL case, does not overcome the existence of prejudice furthered by media, (app:218-225) and exacerbated by the landmark's everyday presence. Nor does the passage of `time' before the trial, regarding news coverage, erase the bias.

verdict was reached.[28]

The discretion[29] of the trial judge is given deference in determinative power as to venue, however, that discretion in a community prejudice case with implications of "media" conflict, must consider the totality of the circumstances. [30] see

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[28] Procedural due process limits governmental actions depriving individuals of "liberty" or "property" interests within the meaning of the Due Process Clause of the XIV Amendment. Mathews v Eldridge, 424 US 319, 332, (1976)Due Process means a jury capable and willing to decide the case solely on the evidence before it. Smith v Phillips 455 US 209, 217 (1982)

[29] The totality of the circumstances can be distorted upon any record through procedural default (app:185-187,140-141,232-35) neglect or fraud. (app:159,33-43) The "Manifest error" standard is applied to trial court discretion concerning change of venue motions. Instant case shows `editorial' comment was abusive and prejudgmental. Patton v Yount 467 US 1025,1031(1984)

[30] Instant case falls squarely under the presumed prejudice standard. see Rideau v Louisiana, 373 US 723,726

Sheppard v Maxwell, 384 US 333,

The "right" to a jury trial does not circumvent that jury, or the PROCEDURES and CUSTOMS (emp.ad.) statutorily enforced or practiced by the State to empanel the same, any less strict construction to insure impartiality.

The question whether a juror has an opinion that disqualifies is a mixed one of law and fact. Reynolds v United States 98 US 145 (1879), Irvin v Dowd, 226 US 717

(Television [newspaper's slanted opinions] has exposed the community "repeatedly and in depth to the spectacle"), Pamplin v Mason, 364 F2d 1, (That voir dire did not demonstrate community prejudice was immaterial with respect to whether such prejudice denied a fair trial...it was unnecessary to prove that local prejudice actually entered jury box. There was sufficient possibility of prejudice lurking in the background to warrant reversal for new trial. Id at 7 (app:216) Coleman v Kemp 778 F2d 1487, (Jury selection process cannot survive Harmless Error Doctrine, Id. 1540 n.24)

(1961) The state appellate court[31] failed to consider any false represenatations made by Petitioner's alleged attorneys.[32]

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[31] The Iowa court of Appeals review erred significantly, (app:177-178,198-199) and the newspaper responded in kind quoting the incorrect determination of the Court, continuing the myth that there was no contrived propaganda. (app:132-155); "...[t]he poisoner is constitutionally protected in plying his trade" Irvin v Dowd supra at 730

[32] The courts should abandon the agency theory of attorney-client relationship. see Duke Law Journal 1988: 733 "The agency theory fails to reflect a clients lack of participation in procedural matters. Further it contravenes the long established distinction between plenary attorney discretion in procedural matters and client discretion in substantive (app:203-210,156-161,201) matters. Id. 742

The court[33] relied on `criminal' analogy to `instructively' uphold an incongruous concept. (app:6-11) Psychological perceptions by jurors subjected to heinous facts [in the criminal realm media coverage] as opposed to civil issues that linger, and impact them personally, manifested by the manner in which they are presented in media,[34] are logically subject to vastly differing portrayal, and

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[33] The State Court concurrence with the defendants argument, instructively applying criminal cases (app:6-11) is discriminatory and overbroad when applied to civil litigants and Petitioner's argument is valid. (app:174-177,180-181) see `curative admissability' 1 Wigmore on evidence Sec.15 (3d Ed McCormick on Evidence Sec. 57 2nd 1972)

[34] "This ownership link between a local bank and the local media (app:160,213-15,149-50,185-87) may produce a dangerous concentration of power." Iowa Law Rev. Vol. 56, 278 The reporters may compromise journalistic standards Id.279

emotional response.

The traditional method of determining prejudice through the voir dire examination is inadequately practiced in CIVIL CASES; the issues can be distorted by conflict of interest of the local political machine. (app:185,190-92,71-76,117-72) The civil litigant must be guaranteed the same impartial jury as the criminal American;[35] "...[t]he psychological impact requiring such a declaration (of impartiality) before one's fellows is often it's father." Irvin v Dowd supra at 728. The influence that lurks in an opinion once formed is so persistent that it unconsciously fights detachment of the mental processes of the

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[35] The American Bar Standard 54 ABA Journal 349 Requires for criminal cases: individual voir dire in media cases. It has "...never been the practice in Iowa." See State v Elmore 201 NW 2nd 443, 446

average man. See Irvin v Dowd, supra at 840, 842-843.[36]

If a city is a defendant, the trial courts "sound discretion" must undergo strict scrutiny in the appellate arena to

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[36] Impartiality is not a technical conception. It is a state of mind. For the ascertainment of this mental attitude of appropriate indifference, the Constitution lays down no particular test and procedure is not chained to any ancient and artificial formula. United States v Wood, 299 US 123, 145-146 Stilson v United States, 250 US 583, 586.

Empirical studies indicate that the voir dire exam is inadequate to remove those jurors who may have significant biases or prejudices. see Ziesel & Diamond, the Effect of Preemptory Challenges on Jury & Verdict: An experiment in a Federal District Court, 30 Stan. L. Rev. 491, 528-29 (1978) and Broeder, Voir Dire Examinations: An Empirical Study 38 S. Cal. L. Rev 503 (1965), Suggs & Sales, Juror Self-Disclosure in the Voir Dire: A Social Science Analysis, 56 Ind. L. J 245, 271 (1981) When a highly publicized civil case comes to docket the judge must show that he has taken all precautions to assure impartial jury empanelment.

prohibit judicial legislating.[37] In this case the trial court gave inconsistent explanations for overruling the motion for change of venue and there was procedural default. see [Rule 10(10) Iowa Criminal Code.] Discretion was abused. (app:211,54-58,) Bias was a controlling factor in the verdict. This attitude is embedded into each jurors subconscious.[38]

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[37] Congress intends a federal remedy in three circumstances: where state substantive law was facially unconstitutional, where state procedural law was inadequate to allow full litigation of a constitutional claim, and where state procedural law, THOUGH ADEQUATE IN THEORY (emph. ad.), was inadequate in practice. Monroe v Pape 365 US 167,173-174

[38] see Singer, Singer and Singer, Legal and Social Psychological Research in the Effect of Pre Trial Publicity on Juries, Numerical Make up of Juries, Non Unanimous Verdict Requirements 3 Law and Psychological REV 71, (1977)

If heretofore controlling statute is unconstitutionally applied, [see IRCP 167], and there was procedural default,[39]

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[39] Pickens v Lockhart, 542 F. Supp 585, (1982) is instructive. The cause and error standard of Washington v Strickland, 673 F2d 879, was examined and from Morrow v Parratt, 574 F2d 411,413-414, the case extracted the rule that the attorney's failure to investigate, inter alia, caused prejudice. Their troublesome issue was the question of effectiveness of counsel, in and if lacking, this would satisfy the `cause' prong of the standard, and that the client was not prejudiced because counsel had filed a `comprehensive brief" and had done `Herculean' (app:90-116) labors, only in favor of their fees. Flynn's misrepresentation, (app:140-41,) to the courts, while he continued to work on the case, filing papers, including a jury demand on a dismissed case, (app.201) and withdrawal on the EVE of the trial when petitioner's property was put in jeopardy by a Scott County Attorney, (app:187-88,54-58) left Petitioner totally compromised. Liabo succeeded in keeping the cause within the prejudicial venue by NOT submitting any evidence in his motion to change venue, and failed to raise proper peremptory challenge as to voir dire, when he was well aware of the community sentiment. He also retained the records and placed a lien against Petitioner. (app:186-87,52,53)

Iowa Law does not remedy the injustice.[40] Civil cases involving prejudice, deserve the equal protection of the law[41] through all legal procedures, including the voir dire. [42]

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[40] The mechanisms envisioned inside present Iowa law do not provide remedy in a case of community prejudice in jury selection, instead it relies on "...the impossibility of any enumeration which encompass and envisage all of the varieties of relationships which might and do bear heavily upon the selection of jurors" as a disclaimer to fair selection of venireman. see 18 ALR 3rd 416,422

[41] Even when the evidence appears overwhelming (a large building in the middle of downtown) and reasonable minds cannot acquit the defendant (in this case rightfully award damages), the double standard of affirming convictions when the evidence is overwhelming and reversing convictions when the evidence is weak is not an acceptable practice under the American System of Government. Each defendant is entitled to a fair trial before an impartial jury. Irvin v Dowd supra at 722

[42] The idea of rejecting the underlying values of a constitutional guarantee, or of viewing the guarantee as burdensome and thus to be restricted-if

[C] The leading case for overturning a jury verdict in exercise of a peremptory challenge system is Swain v Alabama 380 US 702 (see 32 Stanford LR 189), now partially overruled by Batson v Kentucky, #87-5259. 2,22,1989,.[43] The evidentiary showing required is the part overruled. The Swain case imported in the criminal

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applied to other portions of the Bill of Rights-would certainly be rejected. A lack of sympathy for the objectives of the Seventh Amendment continues the functionally meaningless application of the historical test in the hands of some judges, Ross v Bernhard 396, 396 US 531 Also see In re US Financial Securities Litigation 609 F2d. 411 9th Cir 1979 SRI Itern v Matsushita Elec. Corp of Amer. 775 F2d, 1107, 1131 (Fed Cir. 1985) [Judicial economy and expedition being served is irrelevant. The VII Amendment contains no "economy" exceptions.]

[43] Batson held that a defendant can establish his case by showing that he is a member of a cognizable group and that the prosecutor exercised preemptory challenges to remove all members of his group.

jury selection a fair cross section requirememt. See Taylor v Louisiana, 419 US 522.[44] The instant case relies on the following language in Gottfried:" [p.363]. "[4] It has indeed been stated that jurors must be drafted "without systematic and intentional exclusion" of any "geographical," as well as of any "social, religious, racial" or "political"

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[44] The US Supreme Court has held that the first Judiciary Act of 1789 has always mandated an impartial trial. In US v Gottfried, 165 Fed 2d 360, jurors were selected from only three counties of NY state's southern district for the entire district comprised of some 11 counties. This excluded approximately 1/8th of the districts population from jury duty. Defendants were convicted and challenged the exclusion of "rural jurors", said to be about 7% of the part of the district utilized, at 16% if the entire 11 counties were utilized, in other words, the court said, the defendant would have about an even chance of getting two "rurals" if the whole district were used, but only one rural under the system used. He would then get some rural jurors even with the system then in force.

group;....the district and circuit courts have had power since the first Judiciary Act of 1789 to divide a district territorially in the interest of an impartial trial, of economy, and of lessening the burdens of attendance...." From this quoted language, it is apparent that the Court was concerned therein mainly with the problem of geography since there was no mention anywhere of the primary concern here, that of the overwhelming prejudice[45] of city taxpayers in favor of their city, a party defendant. (app:246) A majority of five of the eight jurors were residents of Davenport, the

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[45] Disqualification is better than letting a juror serve if his partiality appears prima facia, from his city taxpayer status. see People v Harris (1981 2nd Dept.) 84 APP. DIV 2nd. 63,445 NYS 2d.520,affd. cert. den.

other three were from Bettendorf.[46] Petitioner is not asking for any homogenous equal percentage of all possible groups. Furthermore, in Gottfried there was an ambiguity in the definition of "rural" resident which does not obtain with county or city taxpayers, certainly capable of unambiguous identification.

Petitioner by virtue of the county seat influence cannot rely on `credible' transfer of `unimpeachable' verification of any of the documentary evidence in the entire matter.(app:52-53,203) The `complete' records are within the

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[46] Petitioner herein complains of the city's exclusion of all residents of Scott County outside the `impacted' city limits of Bettendorf, part of the Quad Cities, and subject to dificult parking problems in downtown Davenport. Likewise, Gottfried was not concerned with the aspect of undue influence of members of the city staff and council represented by influential attorneys in the city. (app:160,71,152-153)

possession of the attorneys and the Scott County courthouse. see IRCP Rule 167 (a) Jurors from outlying districts are "a cognizable group". [47]

In instant case, Art. 609.45 (app:31-32) was repealed one month before Hancock v City Council was originally handed down in August 1986, removing the safeguard against city taxpayers prejudice which had long existed in Iowa in the interests of

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[47] This case is implicit with a city taxpayers being jointly residents of the County Seat, with the same problems analogous to those in the cases where jurors exposed to insurance company advertising will worry about increasing their premiums by their verdicts. See 10 St. Mary's Law Review 399; 37 Washington & Lee Law Rev.1175-9 and 18 Duquesne 761-9, citing Virginia State Board of Pharmacy v Virginia Citizens Consumer Council, Inc., 425 US 748,765 (condemnation of false advertising) and see King v Westlake, 572 SW2d 841 (Ark.78) and Boroski v Yost, 594 p2d 688 (Mont.79).

an equally apportioned,[48] and impartial jury capable of a fair trial.

The "cognizable group" theory was discussed at great length in the case relied on by the appellate court in McDonald, O'Hare v Superior Court, 43 Cal.3d 86, 729 P2d 766 (JAN.,1987), wherein the court discusses the difference between cross-section and defining the community for that purpose, and defining the community for the concept of "vicinage"[49] which found its way into the

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[48] See People v McDonald, 237 Cal. Reporter 597, (holding that the policy of assigning jurors to courthouses nearest their homes denied a defendant his right to a jury drawn from a fair cross-section of the community.)

[49] The O'Hare court stressed the need for a jury of the vicinage of the crime in the Sixth Amendment. The starting point in any analysis, said O'Hare, is the demographics of the community served by the "judicial district." The court discussed the possible disparity of the demographics of the venire and the

Sixth Amendment.

An exhaustive discussion of civil juries, Luneburg and Nordenberg, at 76 Virginia Law Rev. 887,927,969, gives Justice Patrick Higganbotham's views as worthy of great deference, in McGinnis v M I Harris, Inc., 486 FSupp 750 (ND TX,1980), a jury in civil cases MUST be nonbiased. Mr. Justice Higganbotham of the

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demographics of the community, Id. at n.6, p.94, by stating that where there is a significant disparity it becomes incumbent on government to demonstrate a compelling state interest to support the disparity. Herein a demographic disparity is in the concern of taxpayers with the threat of increasing taxes as a result of the litigation and the parking problem near the site. This problem clearly presents a financial motive of the special interests. (app:71-89) Because the unconcerned residents of the county in the outlying judicial district would not be worried about city taxes, limiting the venire to a majority of local residents only is to create a serious failure to mirror the community, and no showing of any state interest can be made except to favor the city staff.

Fifth Circuit Court of Appeals, cited Peters v Kiff, 407 US 493, for this view, stating that an equal or greater bias in jury selection would be required to establish a constitutional violation in a civil context (than for a criminal jury, where there is less tolerance for nonrepresentativeness.) Even so, the demonstration of bias of local taxpayers as opposed to county taxpayers outside the impacted city is overwhelming. An award of "no" damages is proof that a nonrepresentative jury with a built in bias was allowed to be empaneled in the case at bar. Petitioner requests this court to use its powers to undo the violation. It is apparent that where the majority of jurors are city residents and an opposing attorney is representing highranking city officials and councilmen

on trial, there is undue influence of usual force.

This implicates paragraph (c) of IRCP 167[50] implicit in Rule 167 (a) is the concept of equal protection of law. In order to prevent the undue influence[51] of the COUNTY over the jurors.

An unconstitutional application of statute IRCP 167 denied a just result.

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[50] Here the `adverse party has such undue influence.' No affidavits were filed. (app:41,42) Liabo's jury challenges were errant. While peremptory challenges are not of constitutional dimension, the court has held that they are "subordinate (unfettered discretion) ...to the goal of empaneling an impartial jury," Ross v Oklahoma, 108 S Ct 2273, decided June 22, 1988.

[51] NOTE 4.4 The Code of Iowa: The legislative intent is to comply with the constitution. A just and reasonable result is intended. In instant case the City of Davenport is the county seat. The issue of equal protection arises whenever a litigant invokes the civil rights act, Section 1983.

"Even though a peculiarly fair minded juror might state that he might not be prejudice, yet it is an unfair position in which to place a juror and the plaintiff in the case." see 18 ALR 3rd 416 It is unlikely that any juror would admit voir dire his bias in favor of the city. US v Allsup 566 F2d,68,71 This court should recognize that the issue of equal protection was in fact implicit in the factual circumstances as well as the arguments and citations in the briefing in the lower and trial courts, especially Rule 167 (a) & (c) and Section 1983. The entire purpose of these statutes is to entitle the ordinary man to the same standard of fair jurors as the most prominent members of the community.

[D] Municipal ordinances and regulations adopted by state

administrative agencies are authorized for appeal as state "statutes." 28 USC 1257, King Manufacturing Co. v Agusta, 277 US 100 (1928) and Hamilton v Regents of University of California US 245 (1934) "This Court has "...[f]requently treated such challenges to zoning ordinances as challenges to their validity under the federal constitution, and see no reason to revise that approach here. (***)" First English supra at 2385 n.8

In challenging the ordinance (Ordinance 15.08.210) on this record Petitioner asserts that the "law of the case" is not an absolute mandate controlling this court since it may be ignored in extraordinary circumstances vitiating it's effectiveness as a rule fostering orderly convenience. Barrett v State. Mut Life Ins. Co. 440 US 912 cirt. denied. 99 S.Ct. 1226.

The repugnance of the ordinance is plain, and palpable, and consolidation of this record is appropriate; this litigation is of extraordinary circumstances. Courts are ordinarily deemed to have inherent power, independent of any statutory authorization, in ordering consolidation of pending [the ordinance still threatens][52] action between the same parties. Consolidation was denied to Petitioner, (app:16-17) and now appealed, upon the same questions in controversy. The courts may exercise this power with considerable freedom in the interest of the parties and public. Bowen

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[52] If the decision to adopt a particular course of action is directed by those who establish governmental policy, the municipality is equally responsible whether that action is to be taken only once or to be taken repeatedly. Pembaur v City of Cincinnati et al, Case #84-1160 decided March 25, 1986 _____S. Ct._____

v Chase 94 US 812

Hancock supra at 473 states: "Serious flaws in the proceedings...preclude our reaching beyond the procedural due process issues..." This suggests that the State Court of Iowa erred in adequately considering the constitutionality of the ordinance. "[i]f it (the question) were so connected...in substance as to... invalidity of the [lower court's] judgement, we should have no hesitation in holding...the question to be now raised and argued. Parties are not confined here to the same arguments which were advanced in the courts below upon a Federal question [validity of an ordinance] there discussed." Dewey v Des Moines, 173 US 193,197-198 (1899)

Hancock supra at 477: "In comparing the procedure set forth in the city's ordinances with the procedure used...we PASS (emph. ad.) the question whether the city could properly interchange the

housing and nuisance ordinance procedure in arriving at an enforceable order for vacant demolition."

By its own laws, the city could not tear down this secured and unoccupied building, (app:123-128) if that was indeed the ultimate plan. (app:189-91,117-22)

Compliance with Federal common law of nuisance would not act to usurp obvious Congressional and Executive Branch intent as to administrative protection of environmental criteria. Congress has not left the formulation of appropriate federal standards to the courts through application of often vague and indeterminate nuisance concepts and maxums of equity juris prudence, but rather has occupied the field through the establishment of a comprehensive regulatory program supervised by an expert administrative agency. City of Milwaukee

v Illinois 451 US 304 (1981) see National Historic Preservation Act (NHPA), 16 USC 470 et seq. Executive Order 11593 at 36 fed. reg 8921, 36 CFR sec.800.10(c),[53](app:161-167)

A President's home is beyond the jurisdiction of local "political authority". Many federal safeguards are in place to prevent abuse of national landmarks. [54] The building is located

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[53] "...[b]oth Congress and this court have recognized....where laws of national applicability and affairs of national concern are at stake must in proper circumstances give way to accommodate plenary grants of power to Congress to legislate with respect to specialized areas having particularized needs and warranting distinctive treatment." Palmore v United States, 411 US 389 ,407

[54] The Secretary of the Interior has a constitutionally and Congressionally based mandate to protect the rights of the public in the parks [historical objects] United States v. County Bd. of Arlington County, 487 F. Supp. 137 at 139, 140 (1979), Congress has concluded: "...historic properties significant to the

directly on the Railroad easement and adjacent to a span of the bridge[55] connecting to the Rock Island Arsenal and

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Nation's heritage are being lost or substantially altered, often inadvertently, with increasing frequency." 16 USC Section 470 (b) (3). The NHPA created the Advisory Council on Historic Preservation (ACHP) which ultimately must report it's comments to the President, the Congress and the Secretary of Interior. 36 C.F.R. Section 800.10.

[55] In 1842 Attorney Abraham Lincoln (see Hurd et al. v Railroad Bridge Co. US SUPREME COURT) litigated the right of this RR bridge to exist. In 1969 the Illinois Supreme Court decided in reference to the protection of Lincoln's home in Springfield that: "....[p]reservation of historical areas.... is within the concept of public welfare..." see Rebman v City of Springfield 250 NE 2d. 282 at 288 and a companion decision: "When property has an enhanced value by reason of planning and zoning for historical preservation....the owners [of surrounding properties] seek to use it for commercial purposes to exploit visitors and tourists attracted, in part at least, by the creation of the Historical District" M & N Enterprises Inc. v City of Springfield 250 NE 2d 289 at 293. (see Historic Preservation magazine published by the 'National Trust'-March-April, 1989)

Chemical weapons Command aka AMCOMM. The circumstances of this case, usurped district court jurisdiction. [see 28 USC 1345] from the outset. By shielding discovery (app:39,40) and with procedural default in rectafying the curtailed time limits, [Flynn's withdrawl (app:33-40) inter alia] the ACHP (Advisory Council on Historic Preservation) was not notified.[56] Local procedural mandate [improper discovery re; complex litigation[57]/

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[56] The councils determinations are owed great deference unless clearly in error Red Lion Broadcasting v FCC 362 US 367-381

[57] Department of Transportation requirements were not shown to be complied with. [see DOT Sec.4F] (app:165-66) Stop H-3 Ass'n. v Coleman 533 F2d 434 (Insight into Congressional intent as to physical 'jurisdictional' authority, divorced from merely 'political' authority are indicated at Id. 442-443 n.15 (inclusive). In instant case discovery of these complexities was shielded by the trial court imposing unreasonable procedural bars on the time frames when Petitioner

historical landmarks] must not override the federal process of Executive and Congressional intent (see NHPA). The location is specifically conjoined to, and the "effect" is upon the landowners property by virtue of RR easement [access during time of war] of a government defense operation.[58] This furthers the contention that federal remedy was appropriate[59] initially. National defense

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was without counsel. (app:38-40)

[58] see Title 33 Section 650 and Army Corps of Engineers Permit Program Regulations 33 CFR Sec.320.4(a) to (j)(4) (1977)

[59] Even where the authority of one branch over a matter is not exclusive, so that a federal court properly may accept jurisdiction over the dispute, we have recognized that the principal of separation of powers continues to have force as a matter of policy. See United States v Nixon 418 US 683 (1974)
It is now beyond question that a State's political subdivisions must comply

matters, by necessity, are ongoing and comprehensive. See Causby v United States, 328 US 256

If a Presidents home, privately owned, is destroyed, divested of goodwill, or confiscated by a municipal ordinance under the enabling power of state[60] will the state assume liability[61] to the landowner

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with the XIV Amendment. The actions of a local government are the actions of the State. Avery v Midland County 390 US 474, at 480 (1968).

[60] The extent to which a higher level of government, [in this case the federal government] must comply with a local ordinance remains an unsettled question. Compare City of Ithaca v County of Tompkins, 355 NYS 2d. 275 (Sup. Ct. 1974) and Mayor of Annapolis v Anne Arundel County, 316 A 2d 807 (1974) [See 26 Syracuse rev. 407] with Texas Antiquities Commission v Dallas County Comm. College Dist. 554 SW 2d 924 (Tex 1977).

[61] If the V Amendment "Just compensation" clause obtains, is the state, or the city, required to reconstruct [in the event of illegal

for the negative economic impact?

The Supreme Court has held that, as a matter of federal constitutional law, a prosecution under a municipal ordinance is a "criminal case". Camara v Municipal Court, 387 US 523 (1967), See v City of Seattle, 387 US 541 (1967). (app:212,193)

Ordinance 15.08.210 allows that "[i]n the opinion of the building official[62]...they shall...recommend action

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demolition] from the original building materials a facade complying with the Sec. of Interior's guidelines including reestablishing any adjacent easements, in this case within the `national defense functionality' jurisdiction of the War Department? Indiana ex. rel. Historic Landmark Found of Indiana Inc. v White River Dev. Comm'n, 5 Preservation L. Rep. 3005 (1986)

[62] A vested title holder (landowner) may not "tear down" [change] a historical building without first complying with federally mandated protectionary guidelines. eg. Penn Central

required to abate the nuisance to the city council."

[E] If a city brings action against vested rights, without compliance with federally (S.CT.) upheld `historical preservation caselaw', and the landowner whose `vested rights' are administered by Federal intent ie. [environmentally controlling preservation statutes], and

Transportation v City of New York, 438 US 104, First Presbyterian Church of New York v City Council of New York, 360 a.2d. 257, Dempsey v Boy's Club of City of St. Louis, Inc. 558 S.W. 2d. 262 The national government "intent to protect" historical properties grants plenary administration of `vested' interest in that land. The vested interest doctrine has it's origins in the constitutional realm. If the national government, after it's own examination of the relevant state law and PROCEDURE concluded that the state forum would not be sufficiently sensitive to the interests of the national government, the official (Secy of Interior, Secy. of the Army, the President, Congress,) could remove the action to federal court see 28 USC Sec. 1442 (a) & 1442 (a-2)

municipality brings civil action against those `vested rights,' does the federal officer, from whom "title is derived", spiritually [common law] enjoin to the action? [63]

The effect of free and unlimited "fact-finding" power, to make judicial determinations regarding activities that may be categorized as "criminal", grants[64]

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[63] "Jurisdiction means the right to say and the power to act. Jurisdiction is the power of that particular agency to enforce the law." Carrol Vocational Institute v US, 211 F2d 539,549 Cert. denied. 348 US 843

[64] In instant case the fire marshall and housing inspector were not even present at the city council meeting. (Hancock at 478-479), and yet their "findings" under this ordinance constituted a "prima facia" nuisance determination before the city council. see Harrisonville v Dickey Clay Co 289 US 334 (defining nuisance) Ordinance 15.08.210 states at (C) "The city council,...may order the property owner...to abate the nuisance, PRESCRIBE THE MANNER OF ABATEMENT, and FIX the time within which the order shall be complied with"

the building inspector, or the judge who procedurely errs, more power than the federal government. This inquisition style hearing[65] allows in effect, a `taking' by

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(Emphasis added) The granting of Home Rule to cities (Section 364.1 the Code of Iowa) does not alter the jurisdiction of the District Courts determination [in this case the courts proclamation that jurisdiction locally is legal] of an issue. See (Iowa Code Section 657.4 and 364.17 (3) (a) (g). The Code of Iowa 364.3 (6) states Ann: "Rule of strict construction of restrictions of free use of property is applicable where wording of restriction is ambiguous" and "when there is serious question as to the reasonableness of taking under POLICE (emph. ad.) power, ordinance will be construed so as to avoid virtual confiscation and unconstitutionality".

[65] In effect this ordinance denies due process of law to the "accused" [alleged ordinance violator] because it overrides a court hearing on the issue. "The Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." In re Winship 379 US 358, 364 The ordinance is repugnant to the V, VI and XIV Amendments of the US Constitution. The ordinance: 1) illegally threatens title 2) shift the burden of the

demolition and a charging back the cost, in a setting not conducive with court proceedings. Coit Independence Joint Venture v FSLIC as Receiver for First South SA, #87-996, 3/21/89

This substantiates the invocation of a principal that a hybrid civil-criminal [66]case requires stringent and all of the

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right to exist upon the landowner 3) supercedes federal environmental intent. A court of improper jurisdiction must not decide issues of national importance.

[66] "Invalidation unaccompanied by payment of damages would hardly compensate the landowner for any economic loss suffered during the time his property was taken." San Diego Gas, at 575 & 22 eg. "If all else fails, merely amend the regulation and start over again. "[N] The city promises now that: "No matter what action either party takes next, Hancock, regardless of his belief, will have the benefits of PROCEDURAL (emph. ad.) protection as previously held by this court. (See Hancock ante. at 477 [question passed & 479 decline guidance]." (app:183,184) and also "as a PRACTICAL (emp. ad) matter, final action by this court merely puts the parties back to where they were in 1984. "Id. Petitioner

encompassing procedural "equal protection" of the law.

[F] The personal legacy of a President of the United States inherently encompasses a broad national and international importance. The instant global effect of the news media promotes a desire and in all likelihood a policy to sustain optimum quality in the fashioning of a public relations image within the executive branch. This Court has noted

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cannot agree; the inherent value of historical buildings is "history" itself. When President Reagan left office in 1989, the actions of this city defrauded Petitioner the "right" to enjoy a unique and unprecedented element of goodwill forever. The courts shielded the city attorney; If petitioner's alleged attorney [Flynn] knew the facts and was allowed to be a witness, then logically, the city attorney Meloy, possessed vital information as to exactly what motivations prompted the hurried condemnation, (app:90-116) and the people in the background responsible. (app:71-73,100-105)

that there exists a "constant scrutiny of the press" and the "need" to maintain prestige as an element of Presidential influence." Nixon v Fitzgerald, 457 US 731 (1982)

President Grant, Mark Twain, Ralph Waldo Emerson, P.T. Barnum, and Tom Thumb, among others, were guests at this `first railroad hotel west of the Mississippi'. President Reagan lived there for over a year in 1930 (See "Where the Rest of Me? - The Ronald Reagan Story") His association with the building, and the landmark's ancient partiality, environmentally present for history, the stone and mortar witness [see Archeological and Historic Preservation Act, 36 CFR sec. 800.11 (b) (2) (iii)) to the rise of a President with the fortitude to involve his life into a

`new media'.[67]

National defense is of primary concern to the United States and in the courts carries significant deference precedentially. The Commander in Chief accrues his reputation from his personal history and through the media, it becomes known to the world, including adversary[68] foreign powers. (app:247,48)

Petitioner and his landmark are drawn into the `eye of the needle' through the circumstances of this case and the standing[69] is apparent; "...[c]laimant must

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[67] President Jackson was the first President to be photographed by daguerreotype, circa 1840, President Reagan the `Great Communicator' pioneered in the art of entertainment radio circa 1930.

[68] American citizens destroying Presidential legacy would not have played well at the Moscow summit in May of 1988.

[69] The Rock Island Arsenal and Chemical Weapons Command adjacent by RR

have a "personal stake in the outcome of the controversy...for illumination of difficult constitutional questions." Baker v Carr, 369 US 186 at 204 (1962) By the nature of the circumstances of this case it may be possible that the Executive Branch has taken notice of the controversy. (app:212,186-187,193,217) Petitioner and his family are unaware of

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easement to the Presidential landmark logically incurs scrutiny of adversary powers due to the nature of it's defense functions.

A threat to demolish or illegally obtain title to a Presidential Landmark carries within the act serious implications of incognizant defamation of the 'image' of a President. This may, as here, circumstantially involve the defense apparatus under his control. International awareness of an event such as this, is embarrassing to the Nation and could be contorted by adversary powers to import negative political public relations against Presidential prestige, and by virtue of the location of the landmark, distort a controversial political issue [chemical weapons] within the reporting of the international press.

any Executive Branch recognition, regarding anyone involved or that distinct probability and pose the question to the Judicial Branch; Is that material, if it exists, part of the record of this case?

Does the law require disclosure as to the nature of the recognition and the ultimate use[70] of the landmark?[71]

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[70] Iowa is currently by tradition the first caucus state in the election of Presidents; "...[w]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." Bell v Hood, 327 US 678,684, Bivens v Six Unknown Narcotics Agents, 403 US 388 (1971) IV Amendment

[71] This concept of 'national defense' cannot be deemed an end in itself, justifying any....power designed to promote such a goal. Implicit in the term 'national defense' is the notion of defending those values and ideas which set this Nation apart...It would indeed be ironic if, in the name of national defense, we would sanction the subversion of...those liberties...which [make] the defense of the Nation worthwhile." United States v Robel 389 US 258,264 see eg US

The doctrine of separation of powers was adopted by the Convention of 1787, not to promote efficiency, but to exclude the exercise of arbitrary power. Meyers v United States, 272 US 52,292-93 (Brandeis dissenting)

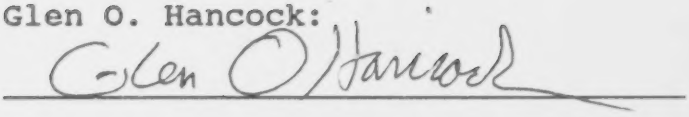
[G] WHEREFORE, Petitioner respectfully prays that a Writ of Certiorari be granted to review the judgment of the Supreme Court of Iowa in Hancock v City of Davenport, ___NW2d___(Iowa App 1988). [72] The repugnancy to the V and XIV Amend. continues as long as the city desires to tear down the historic Vale Hotel landmark

District Court v US 407 US at 332.

[72] In the event that the Petition is granted, Petitioner prays that the judgment be vacated, that cause be remanded to the State trial court, and that the court below be directed to grant a trial de novo of the compensation issue.

for a parking lot for its own project, or illegally confiscate title,(app.236-45) and the case is, therefore not moot.[73]

Glen O. Hancock:



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[73] The "[g]overment hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law. "see San Diego Gas supra at 650, is an "absolute" avoidance dicta promoting judicial legislation. Restricting Petitioner's "uses" is not a primary way of "preserving the public weal"; development was the essence of public benefit. Keystone Bituminous Coal v DeBenedictus, supra at 107 S.Ct. 1232, 1245.

88-2140

No._____

Supreme Court, U.S.
FILED
JUN 27 1989
JOSEPH F. SPANIOL, JR.
CLERK

In The

Supreme Court of the United States

October Term , 1988

GLEN OSWIN HANCOCK

"Petitioner"

v.

City of Davenport
An Iowa Municipal Corp.,

ET AL.

"Respondent"

Appendix:
PETITION FOR WRIT OF CERTIORARI TO THE IOWA COURT OF APPEALS

GLEN O. HANCOCK
P.O. BOX 1106
DAVENPORT,IOWA 52805
(319) 323-1208
Pro Se Petitioner

277 pp

IN THE COURT OF APPEALS OF IOWA

(Filed December 22, 1988)

GLEN O. HANCOCK,)
Plaintiff-Appellant,)
vs.) 8-461
CITY OF DAVENPORT,)87-1022
et al.,)
Defendants-)
Appellees.)

Appeal from the Iowa District Court for Scott County (70078), J.L. Burns, Judge.

Plaintiff appeals from a judgment in his favor on a jury verdict in the district court. **AFFIRMED.**

Glen O. Hancock, Davenport, pro se.

John R. Martin, Corporation Counsel, and Michael J. Melroy, City

Attorney, Davenport, for defendants-appellees.

George B. Norman of Dircks, Ridenour, Norman & Macek, Davenport, for defendant-appellee James Conway.

Considered by Schlegel, P.J., and Hayden and Habhab, JJ.

PER CURIAM

The plaintiff appeals from a jury verdict in his favor against the City of Davenport, eight members of the city council, two city officials, and one private individual, for damages suffered when he did not receive adequate notice or a hearing prior to a decision that his property be declared a public nuisance and should be demolished. For the reasons set out below, we affirm the decision of the trial court.

I. The plaintiff owned a building in downtown Davenport known as the Vale Apartments. The building was built in about 1875 and is currently listed in the National Register of Historic Places. The building at one time was an elegant hotel which could apparently boast President Ronald Reagan as an occupant when he worked for a Davenport radio station. The city vacated the building in 1982 because of numerous housing and fire code violations. It now sits vacant and boarded up. Plaintiff purchased the building with plans to refurbish it to its original splendor. Beginning in 1983 the City took various actions to get the Hancock family to repair the building or demolish it. In 1984 the city council passed a resolution

finding the building substandard to the extent it should be demolished as a public nuisance.

Hancock filed this suit seeking damages and another suit seeking a writ of certiorari and injunctive relief. The latter case was the subject of Hancock v. City Council of the City of Davenport, 392 N.W. 2d 472 (Iowa 1986). The supreme court concluded the City did not provide Hancock meaningful opportunity to be heard which its ordinances contemplated and constitutional due process requires. Id. at 479. Following the supreme court decision, Hancock went forward with his damages action pursuant to 42 U.S.C. section 1983, which alleged violations of this constitutional rights. Prior to the trial date, Hancock's attorney sought permission to

withdraw as counsel because he believed he would have to appear as a witness at the trial. Plaintiff then hired another attorney to withdraw. Also, prior to the trial, Hancock had requested a change of venue because of adverse press coverage of his struggle with the city council. This request was denied. The jury ultimately returned a verdict against all the defendants except James Conway, awarding Hancock $17,235 in compensatory damages, but not punitive damages. The court awarded Hancock's attorneys $13,000 for attorney fees. Hancock then filed this pro se appeal.

II. As grounds for appeal Hancock claims he was denied a fair trial because the district court did not grant his request for change of venue; that he was denied equal protection

under the law due to the questionable methods of the judiciary and the attorneys in this case; and he argues numerous theories as to why the damages determined by the trial court were not sufficient to make him whole.

This case was initially filed as a petition in equity. However, the plaintiff filed a jury demand which was captioned as a law action. Apparently all or most subsequent documents filed and proceedings were at law. A case is generally reviewed as tried in the court below. Schroeder v. Buegel, 371 N.W.2d 178, 179 (Iowa App. 1985). Therefore, our review of this case is on assigned error. Iowa R. App. P. 4.

III. A. Change of Venue. Plaintiff first asserts, he was not given a fair trial because local media attention to the case biased jurors,

thus he argues the trial court incorrectly denied his motion for change of venue.

Iowa Rule of Civil Procedure 167 outlines circumstances under which a venue may be changed:

> (c) Prejudice or Influence. If the trial judge, or the inhabitants of the county, are so prejudiced against the moving party, or if an adverse party has such undue influence over such inhabitants, that the movant cannot obtain a fair trial. The motion in such case shall be supported by affidavit if the movant and three disinterested persons, none being his agent, servant, employee or

attorney, nor related to him by consanguinity or affinity within the fourth degree. The other party shall have a reasonable time to file counter affidavits. Affiants may be examined pursuant to R.C.P. 116.

Decision to grant or deny a motion for change of venue rests in the sound discretion of the trial court. Locksley v. Anesthesiologists of Cedar Rapids, 333 N.W.2d 451, 454 (Iowa 1983). In civil cases the trial court's decision is reviewed for an abuse of discretion. Id. Despite the difference in the court's review, cases discussing the impact of publicity in criminal cases are instructive, the supreme court has stated:

"Exposure to news accounts

> does not establish ipso facto substantial likelihood of prejudice in the minds of prospective jurors. Examination of the pretrial publicity discloses that it was, on the whole, objective, factual reporting. The media expressed no view on defendant's guilt or innocence, nor was the pretrial coverage inaccurate, misleading, or unfair . . . no attempts were made to inflame the public mind or to sensationalize the event (citations omitted).

State v. Johnson, 318 N.W.2d 417, 422 (Iowa 1982).

Plaintiff provides us with only excerpts from a pair of articles and a list of other stories which allegedly prejudiced the jury against him. There is no evidence the articles were inaccurate, misleading or unfair. We do not believe these articles even remotely inflame the public senses or sensationalize the event to the extent prejudice could befall a juror's mind. We find no prejudice to the plaintiff as a result of the newspaper articles shown in the record here. Thus, we find no abuse of discretion.

We also determine plaintiff's allegation that he could not get a fair trial because as taxpayers, the jury would have to foot part of the bill for any judgment he may receive. The trial court denied plaintiff's motion stating no proof existed showing

plaintiff could not select an impartial jury. As we have stated, a decision to grant a change of venue lies in the sound discretion of the trial court. Locksley, 333 N.W.2d at 454. There was no abuse of discretion.

B. Equal Protection. Plaintiff asserts he was denied equal protection of the law because of the actions of the trial court and attorneys in this matter. His argument apparently hinges on complaints the bar and the district court of Scott County are inextricably tied to the whims of the Davenport City Council, thus plaintiff at the very least was not given a fair trial.

We observe plaintiff did not raise, in the trial court, any equal protection arguments under the state or federal constitutions. Although the argument is attempted on appeal, it is

too late. The question was not preserved. Lennon v. City of Muscatine, 272 N.W.2d 429, 430 (Iowa 1978). However sympathetic we may be, we will not address issues, even of constitutional magnitude, not presented to the trial court. In re Staros, 280 N.W.2d 389, 410 (Iowa 1979).

Plaintiff's primary grounds for making his allegations stem from his attorney's failure to object to certain evidence. Also, he complains his attorney failed to present evidence which plaintiff believes was necessary for the proper adjudication of this case. Even if we believe plaintiff's assertions are valid, we cannot now involve ourselves in the second-guessing of plaintiff's attorney's trial strategy. Plaintiff here is bound by the tactical or

strategic decisions made by his trial counsel. State v. Jackson, 387 N.W.2d 623, 625 (Iowa App. 1983). Plaintiff did not raise this issue in the trial court and thus we are foreclosed from addressing it here.

C. **Damages.** Plaintiff argues numerous errors regarding damages. In abridged form, plaintiff alleges he was damaged in a myriad of ways which he was not compensated for by the jury's award. Plaintiff asks this court to circumvent the jury's determination regarding replacement value of the Vale Apartments and the jury's refusal to award him punitive damages. Plaintiff's arguments are without merit.

The trial court did not err to the detriment of the plaintiff in its instructions to the jury. Plaintiff

believes he was not properly compensated for both the taking of his property and for unfair treatment by the City. We do not agree. The trial court propounded instructions which adequately informed the jury as to the damages which could be awarded to plaintiff. The court issued instructions which made it clear the jury could award damages for: depreciation of the building; emotional distress; loss of earnings from the developmental potential of the building; the City violating the plaintiff's constitutional rights; and punitive damages could be awarded against individual defendants.

Paring plaintiff's argument to its simplest form, he claims he should have been awarded greater damages. The determinative question posed is whether

under the record, giving the jury its right to accept or reject whatever portions of conflicting evidence it chose, the verdict affects substantial justice between the parties. Kaufman v. Mar-Mac Community Schools, 255 N.W.2d 147, 148 (Iowa 1977). We hold in this case the jury obtained substantial justice and we do not disturb its verdict.

AFFIRMED.

IN THE SUPREME COURT OF IOWA

(Filed February 02, 1989)

No. 87-1022

Scott District Court No. 70078

ORDER

GLEN O. HANCOCK,

Plaintiff-Appellant,

vs.

CITY OF DAVENPORT,

et al.,

Defendants-Appellees.

Plaintiff-appellant's motion to consolidate actions is hereby denied.

Dated this _____ day of February, 1989.

Bruce M. Small

Justice - Supreme

Court of Iowa

Copies to:

Glen O. Hancock

P.O. Box 1106

Davenport, IA 52805

Michael J. Meloy

City Attorney

Legal Department, City Hall

226 W. Fourth Street

Davenport, IA 52801

IN THE SUPREME COURT OF IOWA

(Filed January 26, 1989)

No. 87-1022

ORDER

GLEN O. HANCOCK

Appellant,

vs.

CITY OF DAVENPORT,

et al.,

Appellees.

The application for further review filed by plaintiff-appellant is hereby set for consideration by this court without oral argument on Friday, March 3, 1989.

Dated this 26th day of January, 1989.

THE SUPREME COURT OF IOWA

By_____

Arthur A. McGiverin, Chief

Justice

Copies to:

Glen O. Hancock

P.O. Box 1106

Davenport, IA 52805

IN THE SUPREME COURT OF IOWA

(Filed March 03, 1989)

No. 87-1022

ORDER

GLEN O. HANCOCK,

Appellant,

vs.

CITY OF DAVENPORT,

et al.,

Appellees.

The application for further review filed by plaintiff-appellant is hereby overruled and denied after consideration by this court en banc, Neuman, J., not participating.

Dated this 3rd day of March, 1989.

THE SUPREME COURT OF IOWA

By_____

Arthur A. McGiverin, Chief

Justice

Copies to:

Glen O. Hancock

P.O. Box 1106

Davenport, IA 52805

IN THE COURT OF APPEALS OF IOWA

No. 87-1022

Iowa District Court for Scott County

No. 70078

PROCEDENDO

GLEN O. HANCOCK,

Plaintiff-Appellant,

vs.

CITY OF DAVENPORT,

et al.,

Defendants-Appellees.

To the Iowa District Court for Scott County:

Whereas, there was an appeal from the district court judgment in the above-captioned case to the supreme court, which transferred the case to the court of appeals, and on the 22nd day of December, 1988, the court of appeals affirmed the judgment of the

district court.

Therefore, you are directed to proceed with diligence and according to law in the same manner as if there had been no appeal.

In witness whereof, I have hereunto set my hand and affixed the seal of the court of appeals.

Dated this 10th day of March, 1989.

Clerk of the Court of Appeals

IN THE COURT OF APPEALS OF IOWA

No. 87-1022

Iowa District Court for Scott County

No. 70078

BILL OF COSTS

GLEN O. HANCOCK,

Plaintiff-Appellant,

vs.

CITY OF DAVENPORT,

et al.,

Defendants-Appellees.

On the 22nd day of December, 1988, the court of appeals affirmed the judgment of the district court.

Clerk's fees incurred . . $ 75.00

Amount of clerk's fees already paid by appellant . . . . . - $ 75.00

Balance due the clerk	$	--
Printing costs of appellee	+ $	38.65
(Computed pursuant to Iowa Rule of Appellate Procedure 16 (c))		
	TOTAL $	38.65

The above costs of $ 38.65 are hereby taxed against the appellant, and judgment is entered accordingly. The costs must be paid to the clerk of the district court, who shall pay them to the persons entitled thereto. See Iowa Code Section 625.19. The district court clerk shall pay them to John R. Martin.

Dated this 10th day of March, 1989.

_____

Clerk of the Court of Appeals

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY, IOWA

(Filed February 24, 1987)

GLEN O. HANCOCK,

Plaintiff,

vs.

CITY OF DAVENPORT, an Iowa Municipality, et al,

Defendants.

) Law No. 70078
) ORDER ON:
) a. Plaintiff's First Motion for Separate Adjudication of Law Point;
) b. Plaintiff's Motion to Exclude Members from Jury Panel;
) c. Motion to Withdraw by John Flynn and Alternate Motions to

) Continue Trial

The Motions pending on or before February 19, 1987, were set for hearing on February 24, 1987. Plaintiff appeared by John Flynn, his attorney. The Defendant, City of Davenport, and the Defendant Aldermen, Defendant Bruce Romer and Defendant Phillip Testa were represented by John Stonebraker and Michael Maloy. Defendant James Conway appeared represented by George Norman. After hearing arguments of counsel and reviewing the motions and resistances submitted, the Court enters the following rulings:

PLAINTIFF'S FIRST MOTION FOR SEPARATE ADJUDICATION OF LAW POINT

In his motion under Rule of Civil Procedure 105, Plaintiff asks the Court

to determine that comparative fault is not a defense to Defendant's alleged violation of Plaintiff's constitutional rights under 42 U.S.C. Section 1983. Plaintiff's petition alleges from the Defendants based upon a violation of his due process rights to notice and a hearing prior to determination that his property was a nuisance and should be demolished. See Hancock v. City of Davenport, 392 NW2d 472 (Iowa 1986). Plaintiff claims that the Defendant's answer in this matter raises as an affirmative defense that Plaintiff's damage "if any, were caused by his own actions and by his own negligence."

In resistance, the Defendants argue that Plaintiff has alleged negligence in his petition, and therefore they are entitled to defend based upon comparative negligence, in Chapter 668

of the Iowa Code.

The recent U.S. Supreme Case of Daniels v. Williams, 474 U.S. ____ 88 L.Ed.2d 662 (1986) satisfactorily answers both of those issues. That case stands for the proposition that "merely negligent conduct may not be enough to state a claim" under 42 U.S.C. Section 1983. 88 L.Ed.2d at 667.

Defendants however point out that one of their defenses is that the Plaintiff did mitigate his damages. This point is well taken. It is clear that when considering damages, the finder of fact may determine and take into account whether the Plaintiff mitigated his damages. Mitigation is relevant to determining the amount of damages Plaintiff has actually suffered because of the alleged violation of his

constitutional rights. O'Neal v. Gresham, 519 Fed2d 803 (4th Cir. 1975); Gieringer v. Center School Dist. No. 58, 477 Fed.2d 1164, at 1167 (8th Cir. 1973).

The Court therefore ORDERS that comparative negligence is not a defense or involved in this case, but that Defendant is entitled to prove that Plaintiff failed to mitigate his damages as it relates to the issue of the amount of damages, if any, Plaintiff is entitled to recover.

MOTION TO EXCLUDE MEMBERS FROM THE JURY PANEL

Plaintiff has asked this Court to exclude from the jury panel residents of the city of Davenport. He claims that such persons have "some potential conflict of interest" in sitting as jurors, since any decision awarding

Plaintiff damages could have some affect on the amount of taxes liable to be paid by the residents of the city of Davenport.

Plaintiff's argument seems to be taken from Section 609.45 of the Code (1985). However, that Section was repealed as of July 1, 1986, by Chapter 1108, Section 58, Laws of the 71st General Assembly, 1986 Session. In order to rule in Plaintiff's favor on his motion therefore, this Court would have to find that all Davenport residents could not be impartial as jurors in this case due to the alleged conflict of interest. The Court cannot do that. No juror is presumed to be bias until the answers to questions on voir dire indicated the juror's inability to be impartial.

The Court ORDERS Plaintiff's motion

to exclude members from the jury panel as denied.

MOTION TO WITHDRAW AND FOR CONTINUANCE

Attorney John T. Flynn has asked to withdraw as attorney of record for Plaintiff. As grounds for the withdrawal, he states that it has only recently come to his attention that he ought to be called as a witness on behalf of his client. Defendants strenuously resist. Attorney Flynn responds by pointing out that the Iowa Code of Professional Responsibility for Lawyers requires him to withdraw.

The procedural context is important to this argument. On August 20, 1986, the Iowa Supreme Court ruled that the city of Davenport violated procedural due process when it ordered the Plaintiff's apartment building to be

demolished. See Hancock v. City of Davenport, supra. The case presently before the Court had been filed in March of 1985 and was not active until after the Supreme Court ruling. Plaintiff through his attorney filed a motion for summary judgment on September 12, 1986. Previously, on August 1, 1986, the case became subject to Rule of Civil Procedure 215.1. Under the local rules of this district, if no motion for continuance was filed before October 1, 1986, the case would be set for trial setting conference. That conference was held on October 16, 1986, and a trial date of March 2, 1987, was set. The hearing on Plaintiff's motion for summary judgment was held on October 29, 1986. The motion for summary judgment, if granted in full, would have obviated the need

for a trial, except as to the amount of damages. However, on January 2, 1987, the order partially sustaining the motion for summary judgment was filed which left open questions of liability, damages, and defenses of good faith action and immunity. Plaintiff filed an application for interlocutory appeal from that ruling, which was denied on February 14, 1987. Mr. Flynn filed his motion to allow withdrawal on February 17, 1987, less than two weeks before trial.

In this case three different public policies conflict. If the Court allows the withdrawal of counsel, then the case must be continued to allow new counsel sufficient time to prepare for trial. That may compromise the policy of efficient conclusion of litigation as embodied in Rule of Civil Procedure

215.1 and the time standards adopted by the Iowa Supreme Court. Refusing to allow Mr. Flynn to withdraw would compromise the policies implicit in Cannon 5 of the Code of Professional Responsibility for Lawyers, specifically ethical considerations 5-9 and 5-10, embodied in Disciplinary Rule DR5-102(A). Either way, some persons or parties might complain about the apparent fairness of the Court's procedures.

In coming to a decision, this Court is mindful that the allegations made by Mr. Hancock are that he has been damaged due to a violation of his constitutional rights to due process relating to his property. The judicial system in this state will jealously guard the rights of individuals against unfair governmental intrusion through

unconstitutional actions. Such an attitude is implicit in the doctrine of separation of powers upon which our form of government is based. The judicial process must be fair, both in its operation and its appearance. It is not fair to force a lawyer to be both witness and advocate in the same case, for it is only in "the exceptional situation where it will be manifestly unfair to the client for a lawyer to refuse employment or to withdraw when he will likely be a witness on a contested issue." EC 5-10, Coded of Professional Responsibility for Lawyers. In this case, the doubts will be resolved in favor of the lawyer testifying and against his continuing as an advocate. The Court will allow Mr. Flynn to withdraw and will continue the

case for a reasonable time in which the Plaintiff can obtain new counsel to represent him.

The Court next moves to the question of whether some limitations on pre-trial discovery should now be entered. The Court notes that there are at least two motions presently pending. Those motions should be considered and will be set for hearing.

ORDER

It is ORDERED that Attorney John T. Flynn is hereby authorized to withdraw from representation of Plaintiff. It is further ORDERED that Plaintiff shall have until March 3, 1987, in which to have another attorney enter an appearance for Plaintiff, or the Court will reconsider the effects of Disciplinary Rules 5-102(a) and DR 5-101(C) (4).

The Court ORDERS that all motions pending as of February 26, 1987, at 5 o'clock p.m. shall be heard upon oral argument commencing at 10:30 a.m. on March 12, 1987. It is further ORDERED that no further interrogatories, requests for production of documents, or requests for admissions shall be filed on or after February 26, 1987, at 5 o'clock p.m. It is further ORDERED that all depositions shall be concluded not less than three weeks prior to the start of the trial in this case.

The Court ORDERS that protective motions or objections to discovery must be filed on or before March 11, 1987, at 5 o'clock p.m., and any such motions will be heard at 10:30 a.m. on March 19, 1987.

It is further ORDERED that all evidentiary motions under Rule of

Evidence 104 must be filed on or before April 21, 1987, at 5 o'clock p.m. and will be heard at 10:30 a.m. on May 1, 1987.

It is further ORDERED that trial of this case is continued to the 8th day of June, 1987, commencing at 9 o'clock a.m.

Dated this 24th day of February, 1987.

James E. Kelley, Judge
Seventh Judicial District

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

(Filed May 19, 1987)

GLEN O. HANCOCK,	)	
Plaintiff,	)	Law No. 70078
vs.	)	
CITY OF DAVENPORT,	)	ORDER ON
et al.,	)	PLAINTIFF'S
—	)	MOTION FOR CHANGE
Defendants.	)	OF VENUE

Plaintiff's motion for change of venue was presented to the Court with oral argument on May 18, 1987. Plaintiff appeared by Mark Liabo, his attorney, and Defendant, City of Davenport, appeared by Mike Meloy and John Stonebraker, its attorneys. Defendant, James Conway, appeared by George Norman, his attorney.

The Plaintiff's motion for change venue indicates this is a civil rights

trial regarding a highly publicized controversy over the demolition of the Vale Apartment Building in Davenport. Plaintiff argues that the controversy was extensively reported upon in the newspapers and television in the Quad-Cities. The motion states "it is inconceivable that any person from within the area served by the newspapers and televisions stations covering the Vale would not have heard or been exposed to coverage concerning the controversy." However, that conclusion does not mean that an impartial jury cannot be selected in this case. No evidence has been submitted by affidavit or otherwise that an impartial jury cannot be selected.

In addition, the Plaintiff cannot satisfy the provisions of Rule of Civil

Procedure d168 (d). That rule limits a change of venue by preventing a change "after a continuance except for a cause arising since such continuance or not known movant prior thereto." In this case, the trial was continued on February 24, 1987, by order of this Court. No cause has occurred since that date which would require a change of venue.

The Court ORDERS that the Plaintiff's motion for change of venue is DENIED.

Dated this 19th day of May, 1987.

James E. Kelley, Judge
Seventh Judicial District

RESOLUTION NO. 84-51

RESOLUTION CAUSING FINAL CONDEMNATION OF A PARTICULAR BUILDING LOCATED AT 210 EAST 4TH STREET

Where, the City Council of the City of Davenport, Iowa believes that the following described property is substandard as to the condition of the building located thereto to the extent that it endangers the life, health, property, safety or welfare of the property pursuant to Chapter 10 of the Uniform Housing Code.

WHEREAS, the City Council wishes to alleviate the substandard condition by instituting action to demolish the building on the above described property.

NOW, THEREFORE, BE, AND IT IS HEREBY RESOLVED BY THE CITY COUNCIL OF THE CITY OF DAVENPORT, IOWA, that the above described building is in a

substandard condition to an extent that it endangers the life, health, safety or welfare of the public, all accordance with Chapter 10 of the Uniform Housing Code.

BE IT FURTHER RESOLVED, that the building reports of the City of Davenport Fire and Housing departments be incorporated and made a part hereof of this resolution as to the substandard conditions existing in this building.

BE IT FURTHER RESOLVED that all objections to the proposed demolition or repair of the building are hereby overruled,

BE IT FURTHER RESOLVED THAT NOTICE, be sent to all of the parties having a valid legal interest in the property of the demolition order,

BE IT FURTHER RESOLVED THAT SAID building on the above described

property be demolished according to all city code standards.

BE IT FURTHER RESOLVED that the Director of the Building Safety Services department is hereby authorized to take competitive bids to demolish said building on March 22, 1984 unless a Two-hundred Thousand ($200,000.00) Dollar Bond is posted and a Demolition Deferral Agreement is executed.

Passed and Approved February 15, 1984.

_____
Charles Peart, Mayor

Attest:

_____
Ruth Reynolds,
Deputy City Clerk

IN THE IOWA DISTRICT COURT

FOR SCOTT COUNTY

CASE NO. 70078

(FILED: July 26, 1988)

GLEN O. HANCOCK	)	
Plaintiff	)	
vs.	)	Law No. 70078
CITY OF DAVENPORT, et al	)	
Defendants	)	
	)	

On June 24, 1988, plaintiff filed motion for new trial. The only statute or rule which would authorized such a motion at this point in time is I.R.C.P. 252 and 253. Rule 253 requires the petition to be filed within one year

after the rendition of the judgement or order involved, and the serving of that petition also within that one year. Final judgment in this case was entered on June 26, 1987. Plaintiff's motion was timely filed, but there was no service of original notice on any party within the one year period, nor were there any directions left with the Clerk therefor. The defendants have now filed motion to dismiss, and the Court finds that the failure of service of original notice is jurisdictional, and that therefore the Court lacks jurisdiction to proceed further with the motion for new trial.

NOW THEREFORE IT IS HEREBY ORDERED that the motion for new trial is denied on the ground that the Court lacks

jurisdiction to entertain it.

_____
Judge Seventh
Judicial District

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

(Filed: June 26, 1987)

GLEN O. HANCOCK,)

Plaintiff,) EQUITY NO. 70078

vs.)

CITY OF DAVENPORT,)

et al.,) JUDGMENT ENTRY

Defendants.)

On this date, the Jury returned a verdict in favor of plaintiff and against all defendants except Defendant James Conway in the sum of $17,235, for compensatory damages.

Therefore, it is the JUDGEMENT OF THE COURT that judgment should enter against said defendants and in favor of plaintiff for the sum of $17,235 plus interest as allowed by law and for the costs of this action.

The Clerk shall mail copies to attorneys of record.

Dated this 25th day of June, 1987.

J.L. Burns

JUDGE OF THE SEVENTH

JUDICIAL

DISTRICT OF IOWA

IN THE IOWA DISTRICT COURT

FOR SCOTT COUNTY

Filed February 11, 1987

Glen O. Hancock,

Plaintiff

vs.

CITY OF DAVENPORT, et al.,

Defendants.

LAW NO. 70078

ORDER RELEASING EXHIBITS

Now on this 11 day of February, 1987, the Joint Motion of the parties being presented to the Court relative to the removal of exhibits from the Clerk's office, the Motion is hereby granted.

WHEREFORE, it is ORDERED, ADJUDGED, and DECREED, that the Clerk of the Scott County District Court is ORDERED to release to John D. Stonebreaker all exhibits filed in the matter of Glen Hancock vs. City of

Davenport, et al., Law No. 68966, at once.

David J. Sohr
JUDGE, Seventh Judicial District
of Iowa

Received exhibit this date 2-11-87
John D. Stonebreaker

Notice of Sale

Sheriff's Office, Davenport, February 6, 1987 to Glen O. Hancock, you are hereby notified that on the 6th day of February, 1987, I levied upon the following described Real Estate, situated in said county, to wit;

[parcel description]

By virtue of an execution in favor of Denver National Bank and against Glen O. Hancock, Defendant That The Same Is Advertised and that the sale will take place at the Courthouse Door in Davenport, In said county, between the hours of 9am and 4pm, sale to commence at the hour of 2pm on Friday the 3rd day of April 1987 Forrest F. Ashcraft-Sheriff by Charles K. Vollmer-Deputy

Sheriff's Sale

In the District Court of the State of Iowa, in and for Scott County

By virtue of a general execution issued from the office of the clerk of the District court of Scott County, State of Iowa, in favor of Denver National Bank and In REM: against a piece of intangible property described as follows dated February 2, 1987 and to me directed, commanded me that of the property hereinafter described, of the said Glen O. Hancock I make or cause to be made the sum of $17,561.31 dollars debt $750. dollars attorneys fee, $38.21 dollars costs sherriffs fees with interest and cost. I levied upon the following described property lieing and being situated in the County of Scott and State of Iowa, viz; Levied upon any cause or chose inaction maintained or claimed by the judgement

debtor against the city of Davenport Iowa [all defendants named], as presented by cause 70078 in the District Court of Iowa Scott County or as otherwise exists, including, but not limited to his claim for general and specific damages, puinitive damages, or attorneys fees. And I hereby give public notice that I shall offer for sale at public outcry at the courthouse door in the City of Davenport County of Scott State of Iowa of Friday ther 27th day of March 1987 between the hours of 9am and 4pm of said day sale to commence at the hour of 2pm of said day and I will sell to the highest and best bidder therefore in cash, the above described property, or sufficient thereof

to satisfy the above debt with interest and cost. Dated 6th day of February 1987 Ottesen, Hoffman & Priester Attorney for Plaintiff Forrest F. Ashcraft-Sheriff by Charles K. Vollmer-Deputy

PUBLISHER'S NOTE:

The following pages are unavailable for filming:

58 thru 61

DEFENDANT'S EXHIBIT I

SL 5-11-84

CASE # 68966

Mr. Glenn O. Hancock

#7 42nd Street Court

Davenport, IA 52806

January 16, 1984

Attn: Maycr Charles Peart

Committee of Davenport City Council

City Hall

Davenport, IA 52801

Gentlemen:

I would like to introduce myself to you. I am the owner of the Vale Apartment Building as well as several other properties within the city limits of Davenport. Despite what you may have thought in the last few months, I do exist and I am pleased to be with you today to discuss my plans for the Vale property. As a point of information, I would

like to give all members of the committee some background information on myself and my family since we do go back several years within the community of Davenport and we are not out-of-towners trying to take advantage of a situation.

I was born and raised in Davenport, graduating from Sacred Heart Cathedral Grade School, Assumption High School and St. Ambrose College.

My father operated Hancock Insurance Company, Hancock Construction Company and Hancock Real Estate Company, as well as owning and managing over 200 rental properties for over 25 years within the city. When my father's health began to fail, he sold the business as well as all properties and moved to Sun City, Arizona, on the advice of his physician. I was offered an opportunity at that time with a

property management firm in Denver, Colorado, and I readily accepted, since it offered new challenges and I was out of a job after having worked with my father for 15 years in his business. For the past 2½ years I have managed properties with an approximate value of $250 million.

My father was presented with numerous problems due to people "bleeding" the properties that he had sold on contract, but due to his failing health and my inability to leave my full-time position in Denver, we were unable to travel to Davenport to correct them. My father passed away in December of 1983 and I became faced with the responsibility of assisting my mother in correcting the problems she is faced with, as well as my own with the Vale. Therefore, as of January 13, 1983, I have permanently relocated

in Davenport, having left my position in Denver. Effective immediately I will be overseeing all operations, as well as expanding the Hancock Companies on a full-time basis.

I would at this time like to familiarize you with my plans for the Vale, as well as to respectfully request a 6-month extension on any City Council action. I would propose the following sequence of events and try to outline a time frame that I can realistically commit to.

1. I have a verbal commitment from a not-for-profit corporation to joint venture with me should the Vale Apartment refurbishing prove to make economic sense. That was obtained at lunch on January 16, 1984.
2. I have contracted with Ted Fisher to conduct an appraisal

which is in its final stages.

3. I have contracted a certified public accountant to do pro-formas for the possible sale of condos as well as tax shelters to investors who would be interested in participating in some of the numerous tax incentives that are offered by national historic sites.
4. Now that I have affiliations with a not-for-profit corporation, I am negotiating with architects and engineers to develop plans so that once we receive a grant from the National Historic Society, we can proceed to obtain bank financing as well as individual investor financing.
5. I have on my own contacted three demolition companies for

their prices to demolish the property so that I could control the demolition myself should items 1-4 prove not to be financially feasible.

Within 90 days I will have firm or written plans as well as cost projections for renovation of the Vale. It would be my intention within 90 days to be able to determine whether or not I will be able to obtain financing to do what I feel would benefit the City of Davenport and myself the best.

If we should determine that demolition would make the most sense, then I would oversee the demolition myself and hopefully would be able to turn the 19,000 square foot lot into approximately 73 parking spaces.

Gentlemen, I appreciate the time you have given me today and I would appreciate any consideration you could

give me with regard to this extension. I want to apologize for any inconvenience and delays that have been caused by my not being within the city. However, hopefully by my moving back into the city that has been corrected. If you should have any questions, please feel free to contact me at my home.

I have contracted with Per Mar Security & Research to make a fire protection survey and the results will be back to me by January 29, 1984.

Respectfully Submitted,

Glen O. Hancock

PLAINTIFF'S EXHIBIT 29

JD 1-18-85

CASE #68966

United States Department of the Interior

Heritage Conversation and Recreation Service

Washington, D.C. 20240

Dear Mr. Hancock

Re: The Burtis Kimball House

Thank you for your letter supporting the proposed listing of the above property in the National Register of Historic Places. We are pleased to advise you that this property was entered in the Naional Register on April 2, 1979.

We appreciate your participation in the National Register commenting process and are enclosing a leaflet describing the National Register program.

Sincerely yours,

William J. Murtagh

Keeper of the National Register

Enclosure

PLAINTIFF'S EXHIBIT 10

JD 1-17-85

CASE #68966

DOWNTOWN DAVENPORT DEVELOPMENT CORP.

1979 - 1980 - 1981

BOARD OF DIRECTORS

Executive Committee

James V. Hancock - President

Thomas Midkiff - Vice-President

Edward L. Carmody - Sec./Treasurer

1979 - 1980

Members of the Board

George Norman

James K. Figge

Charles A. Ruhl, Sr.

Charles R. von Maur

Mel Foster, Jr.

Ron Rickman

David A. Shern

David Koenig

Ray Phillips

Barry O'Brien

Michael Crawford

James Ingram

1980 - 1981

Members of the Board

Frank Folwell

James K. Figge

Charles A. Ruhl, Sr.

Charles R. von Maur

Mel Foster, Jr.

Ron Rickman

David Koenig

Ray Phillips

Barry O'Brien

Michael Crawford

James Ingram

David A. Shern

1982 - 1984

Members of the Board

Same as 1980 - 1981

with the exception of

Mr. Shern who's resignation

left a vacancy.

INSTANT CASE 70078

EXHIBIT 61

RERC

REAL ESTATE RESEARCH CORPORATION

72 West Adams Street

Chicago, Illinois 60603

June 26, 1981

Mr. Robert J. Mulready

City Administrator, City Hall

226 West 4th Street

Davenport, Iowa 52801

Dear Mr. Mulready:

In conformance with your authorization, we submit our economic feasibility study for a proposed Community Activities and Performing Arts Center which would meet current and future needs of the City of Davenport.

Respectfully submitted,

REAL ESTATE RESEARCH CORPORATION

John W. Diamond

Vice President and Director of

Hotel/Motel Studies

Eugene E. Krell

Senior Analyst

JWD:EEK:lcm

4. Although one-way traffic east on Third Street makes it inconvenient to unload passengers at the Center, safety islands will help to solve this problem.

5. Some remaining undesirable surrounding land uses are expected to be removed or upgraded.

6. The Activities Center lobby will offer an attractive vista of the Mississippi River and Rock Island.

7. A number of good restaurants and other Center support facilities are within walking distance.

3. Demand for hotel rooms stimulated by other events in the Performing Arts Center and the Community Activities Center will create an expenditure of another $105,000 for hotel rooms in or near downtown.
4. Increase in hotel room demand would justify the addition of 90 to 100 rooms to the Blackhawk Hotel or renovation of the Mississippi Hotel and conversion of rooms to transient use.
5. Downtown and near-downtown restaurants, clubs, and bars could expect to receive more than $800,000 annually from users of the Center.

4. The Parking

A supporting element vital to the success of this proposed center is a six-level parking ramp providing 504 convenient parking spaces. For comfort, convenience, and security, it is proposed that this structure be connected by enclosed ramps and arcades with the hotel, activities center, and performing arts center. This parking structure is particularly important for events or meetings not attracting capacity crowds. People recognize that they may have to park at some distance if many others are attracted to an event, but they expect to be able to park at a convenient location at other times.

The recent traffic study completed

by Wilbur Smith and Associates shows that in 1980 there is a daytime deficiency of more than 800 parking spaces for the blocks immediately surrounding the site chosen for development of the parking ramp. Of course, not all of that demand needs to be met on the site of the Activities Center Ramp, but it does point to the great need for parking to meet the additional demand generated by the new Community Activities Center. With the addition of the Activities Center, Wilbur Smith and Associates estimate that there would be a deficiency of over 2,000 daytime parking spaces on the block located within 600 feet walking distance of the site. With

this level of potential demand it may be desirable to limit parking ramp usage to persons attending major events in the Performing Arts and Community Activities Center.

It is expected however, that there would be little competition in evening hours for persons other than those attending events in the Center and that the parking ramp would be available to conveniently serve about 1,200 people (assuming that there will be 2.5 persons per automobile). If fees are competitive, we expect the facility to be the preferred parking location for persons coming to the Center because of its convenient location.

Direct, protected access to the Sundance Social Club at the ground level and to the hotel, Activities Center and the Performing Arts theatre at the second level would expand use of the parking facility and increase the attraction of the Center for many potential users and attendees. As stated initially, we are convinced that usage of each element included in the center is closely related to the presence of each of the other elements.

PLAINTIFF'S EXHIBIT 2

JD 1-17-85

CASE #68966

(EXHIBIT 71 - CASE #70078)

PARKING PROGRAM STUDY

prepared for the

CITY OF DAVENPORT, IOWA

by

WILBUR SMITH AND ASSOCIATES

October, 1981

PARKING STUDY

PAGE 20

Surplus and Deficiency - Upon completion of the calculations determining adjusted supply and parking demands, a comparison of these figures may be used to indicate where parking is needed. The numbers are compared on a block-by-block basis, and the differential of the comparison is commonly referred to as parking

"surplus or deficiency." It should be noted that these numbers cannot be used as a quantitative figure for determining required parking spaces or the existence of too many parking spaces.

The completed analysis of parking spaces in terms of surplus and deficiency is shown in Figure 6. As

PARKING STUDY
PAGE 20 (continued)
indicated in Figure 6, the area around the proposed Activity Center was identified as having more parking deficiencies than surpluses, indicating a probable need for parking. The irregular outlines shown for these two sites encompass areas which are 600 feet from the proposed facilities and represent an individual's normal

walking distance.

Parkers will tolerate longer walking distances in certain circumstances, depending, of course, on area characteristics, space availability, parking rates, and the environment. Parkers now using the parking lots located south of River Drive and walking to the Orpheum Theatre are exceeding the 600-foot walking distance either because other space is not available at

night for special events, or they are taking advantage of low parking rates during work days. However, the same daytime parkers will pay a higher parking rate on a cold rainy day in order to park closer to their place of

employment.

Projected Parking Needs

Future parking needs were investigated through a study of the proposed downtown projects to determine additional parking demands. The parking demand adjustments were made for the blocks on which the area developments will be located.

There are three proposed developments that are being considered for the study area. These developments are:

1. Activity Center
2. Ground Transportation Center
3. LeClaire Park improvement

Activity Center - The proposed Activity Center complex will be located in Block 10 of the study area. For parking demand analysis, the

development criteria used were (1) theater; (2) exhibition/activity center; and (3) retail. Parking requirements may change depending upon ultimate development design and the mix of the three criteria on the site.

Parking Needs Comparison

The anaylsis results of projected parking surplus and deficiency in the respective project areas were used to make a comparison of the expected parking needs. A comparison of the surplus and deficiency findings for blocks within a 600-foot walking distance of each proposed site was made, as shown in Table 9.

The comparison of these figures indicates a greater need for additional spaces in the Activity Center area than in the GTC area, although additional parking should be provided in both areas.

The blocks in the Activity Center area experience a parking space deficiency in 8 of the 10 blocks within the 600-foot walking distance used for

comparison purposes. The construction of the Activity Center will eliminate some existing parking spaces, thereby increasing the parking space deficiency, and, in addition, the use of the facility will create additional parking demand. The Ground Transportation Center area analysis indicates deficiency of parking spaces in 4 of the 10 blocks within the 600-foot walking distance.

PARKING STUDY

PAGE 51

Activity Center Parking

The economic assessment of the Activity Center did not result in a favorable coverage factor. However, additional parking to be included as part of the center will be required to make such development of the project feasible. It is recommended, therefore, that the City actively pursue a combination of funds to result

PARKING STUDY

PAGE 52

in the development of the proposed 504-space parking garage. This funding may be realized from UDAG, Parking Revenue Bonds, and other sources, as previously discussed.

EXHIBIT F

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY (FILED JULY 17, 1985)

GLEN O. HANCOCK,

Plaintiff,

vs.

CITY COUNCIL OF THE CITY OF DAVENPORT and THE CITY OF DAVENPORT, IOWA,

Defendants.

FINAL ARGUMENT NO. 68966

The Plaintiff, in his Trial Brief, filed previously with the court, reviewed the history of the case before the Court. For the sake of brevity, the Plaintiff will not review this material in the closing argument.

The Plaintiff also stated to the court in his trial brief that the evidence would show that the Vale Building is vacant, secure, structurally sound and is being monitored 24 hours a day for fire

protection.

In support of these facts, the Plaintiff cites the testimony of Dan Palmer, the President of Tri-City Electric, who has over 10 years experience in construction and commercial remodeling. Tri-City Electric occupies the building adjoining the Vale. Mr. Palmer testified from his own personal observations that the building was sound.

The Plaintiff also cites the testimony of the Plaintiff's expert witness, William J. Knapp, P.C., of Shive-Hattery Engineers, who testified that after studying the structural support system of the building his firm concluded that the building was sound. He also testified that Shive-Hattery has independently and voluntarily contracted to continually observe the

building to monitor any structural changes.

Glen Hancock testified that he had installed a functional fire alarm system in the building and had contracted with a security firm to monitor it 24 hours a day. He also testified that he had contracted to install a burglar alarm system with the same security firm. Mr. Hancock also testified that he inspected the building daily to check on its condition and to prevent break-ins.

Testimony was introduced by Chief Vandemark that on October 15, 1984, an alarm was received from the Vale Fire alarm system and that the Fire Department's response time was two minutes. He also testified that a two minute response time is standard for the Central Fire District. Chief Vandemark also testified that the Fire

Department has contingency plans for fighting fires in all downtown buildings, including the Vale Building.

From all of these facts, the Court should conclude that the building poses no danger to the general public. Furthermore, as Mr. Hancock testified, he was prepared to offer this evidence on September 4, 1984 at the court hearing scheduled by Judge Newman to review Hancock's progress. Therefore, the building posed no danger to the general public on September 4, 1984.

At the first hearing in May of 1984, Judge Newman heard testimony of Mr. Donald Stevenson, the Plaintiff's architect. Mr. Stevenson outlined phases of work and schedules for completing the work. This information has been reintroduced in this hearing. As Mr. Hancock testified, he had completed all of the steps outlined by

Mr. Stevenson to be completed by August 31, 1984. Mr. Hancock met the intent of Judge Newman's temporary injunction and was prepared to prove his compliance on September 4, 1984 at the court hearing. If that hearing had proceeded, Mr. Hancock would have been entitled to either an extension of his temporary injunction or a permanent injunction prohibiting the City from proceeding with the attempted demolition of his agreement.

What happened at the September 4, 1984 court hearing? The Court has the transcript of this hearing (Joint Exhibit #2). The City waived or dropped their first demolition action in open court. Did this mean that no injunction was needed or that the Plaintiff had won? Unfortunately, the City's action left the legal status of the dispute in limbo and the Plaintiff

inadequately protected.

The City's decision to drop the first demolition proceeding suggests that it feared that it would lose September 4, 1984 in court. The City's course of conduct suggests it suspected an injunction would prohibit it from demolishing the plaintiff's property. So the City took this matter out of the hands of the Court and dragged the Plaintiff back to City Hall.

At the Council Hearing on September 4, 1984, there was no pretext of judicial process. It was evident even to the casual observer that the whole approach of the City Council was based upon the City's determination to demolish the Plaintiff's building. On September 5, 1984, the City voted, first, to condemn the Plaintiff's property and, second, to award a

contract to tear it down. The City scheduled the demolition to begin September 10, 1984. (See Answer) This is further evidence of the City's predisposition.

Without discussing the due process issue which is addressed in the Plaintiff's Trial Brief, the entire procedure utilized by the City, as demonstrated by its conduct, was a deliberate attempt to take the Plaintiff out of court (where it is likely he would have been successful) and to tear his building down 6 days later. This conduct is so shocking and outrageous, it alone should be sufficient grounds to stop the City from persecuting the Plaintiff.

This problem was pointed out by the Court on Spetember 4, 1984 on page 20 of the transcript (Joint Exhibit #2).

The Court stated on page 21 of the transcript:

"The Court: How much time do they have to give?..."

"Mr. Meloy: There is no specified time, Your Honor."

"The Court: So they could order it torn down next week, is that what your're saying to me?"

"Mr. Meloy: Yes, your Honor."

* * * * *

Page 22

"The Court: So what you're telling me is, in light of the fact that you're redoing it, the first procedure is waived?"

"Mr. Meloy: I think that is a correct statement."

Why would the City act as it has in this case? Why was it willing to go to almost any lengths to tear down the Plaintiff's property? What was the

motive?

The Plaintiff contends that the City's evidence regarding the allegation that his building was a danger to the public is so weak, when properly scrutinized, it could not be the underlying reason for the City to demolish his building.

At trial the City introduced eight photographs taken January 9, 1985 showing cilings and walls where plaster has fallen and two broken windows and two holes to the exterior on the east side of the fifth floor of the building. This is a building with almost 19,000 square feet of ground space, 80,000 square feet of interior space, 5 floors, 2 wings, 3 interior stairways, 2 elevators and 257 windows. At trial Mr. Vandemark and Mr. Cervantes testified they spent about one and one-half hours in the building

January 9, 1985, and took no notes during their inspection.

The City's condemnation proceedings apparently rely upon an inspection whcih purportedly occurred August 25, 1983. The Plaintiff and the Court have never seen this inspection report. It was not served on the Plaintiff. It was never introduced into evidence against him at the "hearing" before the City Council on September 4, 1984. It was not provided to the Plaintiff in response to his Request for Production. It was not attached to the City's Return to the Writ of Certiorari and, it was not introduced at trial. Simply stated, there is no evidence before the Court regarding the alleged inspection which occurred August 25, 1983. The City has offered nothing to support its contention that the building was a

danger to the public on August 25, 1983. Yet, the City Council purportedly relied on this inspection in concluding that the building presented a danger to the public. This inspection may have supported a "charge" that the building was a nuisance, but this "charge" has never been proven by substantial evidence. Therefore, the resolution condemning the building is a nullity. It has no basis in fact.

The City's case, standing alone and unrebutted, would not justify demolishing the Plaintiff's building. There is ample evidence before the Court that the building is of great historical value and that demolishing it would cause irreparable harm to the Plaintiff.

The Plaintiff contends that the City's evidence regarding nuisance is so weak and that its procedure was so

confiscatory, that the Court is forced to look at another motivation for demolishing the building.

The Plaintiff believes that the City wanted the ground upon which the Vale sits for parking for its new Civic Center. Furthermore, it wanted this ground without paying for it.

The Plaintiff believes that if he establishes by a preponderance of the evindence that the City's actions were based upon an improper motivation, that he is entitled to his expenses of defending his interests and a permanent injunction against the City.

A reasonable City Council should have, in the exercise of ordinary care, realized that the building was not a danger on September 4, 1984, that the Court is entitled to question the appropriateness of the Council's actions.

Why did the Council order the Vale demolished? The City Council had just recently puchased the Courtland apartment building within 6 blocks of the Vale. The Council bought this building to remodel it. The Court can compare the Vale and the Courtland by the photographs taken of both buildings on January 12, 1985. The buildings are both brick, multi-storied apartment buildings. The Court can see the numerous broken windows in the phctographs of the Courtland. The Court heard that the doors of the Courtland were open and that ground level windows were broken.

Why did the City buy the Courtland to remodel, yet seek to demolish the Vale? Such an obvious inconsistency forces the Court to look at other motivations besides age and condition of the buildings. One is forced to

look at location and money.

There is ample evidence that the City needs the ground upon which the Vale stands for parking for the Civic Center.

The Parking Program Study, Plaintiff's Exhibit #2, shows an approximate 900 car-a-day deficit for parking within 600 feet of the Civic Center (page 23). This distance of 600 feet from the Civic Center includes the Vale location.

The Study proposes a 504 car ramp to be built on the half block North of the Blackhawk Hotel from Perry Street to Pershing Street (page 28).

The Study indicates a site acquisition cost of $840,000.00 for the ground to build this ramp (page 35).

The Economic Feasibility Study for the Civic Center and the RKO renovation (Plaintiff's Exhibit #3) relies on this

parking study (page 1). The Study concludes when the Civic Center is completed there will be a 1,000 car-a-day parking deficit within 600 feet of the Civic Center and when the RKO theater is renovated there will be a 2,000 car-a-day deficit within 600 feet of the Civic Center (page 12).

This Study indicates that the proposed parking ramp is critical to the success of the Super Block, but that the ramp alone would not provide enough parking space (page 12.)

The study indicates that undesirable surrounding land uses will be removed (page 4).

Furthermore, the feasibility study indicates that the Center will operate at a loss (page 52).

The Parking Study showed that the ramp, when built, would operate at a loss also (page 51).

These two studies were completed in 1981. But going back to 1979 we find the Resolution creating the Downtown Urban Renewal District which approved an Urban Renewal Plan. (Resolution 79-580, Plaintiff's Exhibit #9)

As part of this Resolution is the "City of Davenport Urban Renewal Plan". On the 8th page of this Plan is a map of the district which includes the Vale. Under Section 10(c)(2) Land Acquisitions for the project known as the "Super Block" is listed:

"a) "Super Block" Activity and Performing Arts Center, including parking lots 103, entire site..."

(3) Demolish and remove structures deemed obsolete, structurally unsound, or

environmentally incompatible with essential elements of the Project. Such demolition is anticipated in relation to the Project elements known as:

(a) "Super Block sites for exhibition and parking facilities."

On page 14 of the Plan are proposed projects listing the following:

"Activity Center Downtown, $15,500,000.00 including Parking Sites #1 (Fourth, Perry & Pershing)
#2 (Third & Perry)
#3 (Perry, Fourth & Fifth)

The Plaintiff contends that Site

#1 was the parking ramp proposed in the Parking Study and that Site #3, namely, "Perry, Fourth & Fifth" included the Vale Apartment building.

The City's desire for the Plaintiff's ground is further confirmed by the conversation between Dan Palmer and Phil Testa, Director of Community Development. Dan Palmer testified that after seeing a notice in the paper regarding a public hearing on the Vale scheduled for January 16, 1984 that he called Phil Testa to ask him about protecting Tri-City Electric's building in the event of demolition of the Vale. Mr. Palmer testified that he then asked Phil Testa what the City would do with it once the building was torn down. Mr. Testa advised Mr. Palmer that the City would use it for a surface parking lot for 4 or 5 years and would then probably build a multi-storied parking

ramp on the site. Of course, Mr. Testa denies that he ever said that the City wanted the ground for parking. But Mr. Testa states that he met with Mr. Palmer in 1983. Mr. Palmer states his only contact with Mr. Testa was by telephone prior to the January 16, 1984 council meeting. Mr. Palmer has no interest in this lawsuit. Plaintiff believes that his testimony is the most credible regarding this conversation.

All of this evidence establishes the City's need for the ground for parking. But, did the City really try to take the Plaintiff's ground without paying for it?

Mr. Hancock testified that if the building were demolished and the cost were assessed against the ground, he would probably lose it by a tax deed to the City in about 3 to 4 years. This coincides exactly with Mr. Testa's time

table for building a parking ramp on the site.

Mr. Testa's involvement with this project must be reviewed.

On August 25, 1983 Phil Testa orders an inspection of the Vale.

On August 25, 1983 the City inspectors invade the Vale.

On September 1, 1983 Phil Testa first discusses demolition of the Vale at a City council meeting.

On September 7, 1983 Jim Conway of the Downtown Davenport Development Corporation prepares a plan for parking on the Vale site.

On September 15, 1983 Notice to Appear mailed to Thomas J. Hancock in Arizona.

On January 10, 1984 Phil Testa prematurely orders the water service to the Vale abandoned.

On January 12 or 13, 1984 Phil

Testa tells Dan Palmer that the City will use the site for surface parking for 4 or 5 years and then build a parking ramp.

On January 15, 1984, Glen Hancock moves back to Davenport.

On January 16, 1984 City Council holds first hearing on the Vale.

Spring of 1984 City sells bonds to raise money to demolish the building.

Jim Conway is clearly an agent of the City. He is downtown coordinator of the Downtown Davenport Development Corporatoin (DDDC). The DDDC is under contract with the City. It advises on expenditures of the Civic Center Bond.

In the 1983-1984 City Budget Summary showing actual expenses, the debt service for the Civic Center is $600,788.00 for the first fiscal year. (Budget pp203-204).

Bruce Romer testified that the

Hotel/Motel Tax was originally set up to pay the entire debt service on the Civic Center. But as mentioned above only $259,972.11 of these funds were actually available for debt service.

$600,788.00 Annual civic center debt

-259,972.10 Hotel/Motel tax

$340,815.89 Debt service deficiency

This leaves a $340,815.89 shortage in the year 1983-1984 which had to be covered from other revenue sources in the general fund.

In the proposed budget for the Civic Center on pages 203 and 204 of the 1983-1984 budget we find that the entire $600,788.00 debt service on the Civic Center was to be paid by the "Central Business District Urban Renewal Tax Increment" funds. Mr. Romer said this was the same as the "Downtown Davenport Self Supporting Municipal Improvement District" Funds.

city tax money. It controls the funds in the urban renewal tax fund collected by the City. Furthermore, Conway, Testa and Bruce Romer all testified that Conway works with City Planners.

Phil Testa's duties include planning. He works with Conway.

The preponderance of the evidence indicates that a decision was made September 1, 1983 to tear the Vale down for a parking lot. There is absolutely no other reason why on September 7, 1983 James Conway would draw his map for parking at the Vale site. (Mr. Conway testified that the DDDC has drawn no plans for parking on other sites in the downtown area).

The City could have exercised emminent domain to take the Vale for parking. Of course, it would have to pay the fair market value for the ground and the building and it would

have to pay the fair market value for the ground and the building and it would have to bear the whole cost of demolition.

If the City would demolish the building under its police power as a nuisance, it could assess the cost of demolition against the land. If the owner did not redeem the special assessment the City would get a tax deed in about 4 years for only the costs of demolition and pay nothing for the ground and building.

~~What~~ set of facts would force the City into such a desperate gamble? When trying to understand the City's actions one must always look at money. Where is the revenue coming from and where is it expended?

Plaintiff's Exhibit #4, shows that the Hotel/Motel 1984 Actual Tax was first applied to the Civic Center

operating loss in the amount of $125,196.67. The balance of $259,972.11 went toward the debt abatement on

$224,021.89 Revenue Shortfall

+125,196.67 Civic Center Loss

$349,217.56 Total Center deficiency

There is actually $349,217.56 in 1983-1984 fiscal year which had to be covered from other sources in the general funds.

Recall that the City had a projected site acquisition costs for buying the ground for its ramp across the street of $840,000.00 and that Mr. Romer stated that they have no money budgeted in 1984-1985 to buy that ground. There is , in fact, no money left to buy that ground and there is none available in the foreseeable future.

In conclusion, the City has run out of money. Revenues were less than expected and operating expenses were greater than planned. In desperation, the City attempted to confiscate the

Plaintiff's property.

It is now up to the Court to stop this action by the City. Plaintiff asks that a permanent injunction be entered prohibiting the City from condemning his property. He further requests that he be awarded his expenses of defending his property and under 42 USCA Section 1983 that he be awarded any other damages that the Court believes are appropriate. John Flynn.

DOWNTOWN DAVENPORT DEVELOPMENT

CORPORATION

PORT OF DAVENPORT, 404 MAIN STREET,

DAVENPORT, IOWA 52801

September 7, 1983

Robert Oaks

Trust Department

Davenport Bank and Trust

203 West 3rd Street

Davenport, Iowa 52801

RE: Burtis Kimball House

NE: Vale Apartments

Dear Bob:

I enjoyed talking with you about the subject property this week. I'm enclosing some materials which may be of interest to you. Please review the

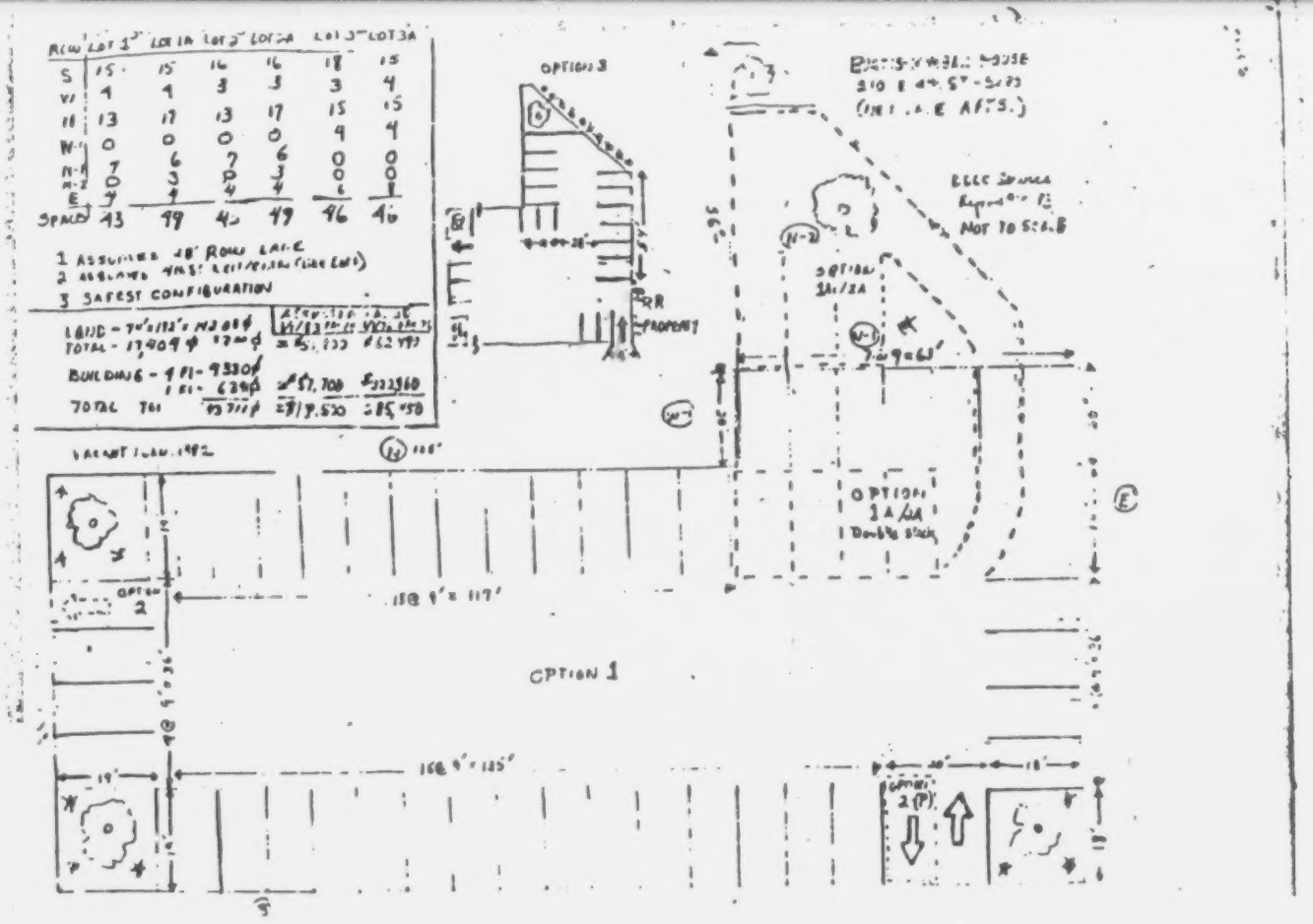
information which I got from the City Assessor's office, particularly with regard to the size of the building.

In friendship,

James D. Conway
Downtown Coordinator

JDC/mjs

BEST AVAILABLE COPY



DOWNTOWN DAVENPORT DEVELOPMENT CORPORATION

PORT OF DAVENPORT, 404 MAIN STREET, DAVENPORT, IOWA 52801

MEMO TO: Bob Oaks

FROM: James Conway, Downtown Coordinator

DATE: January 10, 1984

RE: Urban Renewal Law Section 403.7/403.8 Condemnation/ Disposition

In my estimation, the City of Davenport isn't currently anticipating any legal action against 210 E. 4th Street other than condemnation of the existing structure. However, as I mentioned to you, the City's urban renewal plan for the area, which includes this property, allows the City to acquire and dispose of such properties in a manner similar

to its other authorities for eminent domain. At the same time Iowa Urban Renewal Law is the only legal means available to the City to take such action on behalf of a private developer.

The two referenced sections are attached with key points underlined. As an example, should the City be asked to help redevelop a property, say the Vale Building through condemnation, the developer would need to follow the procedures in the law. As would be the case with any open bidding process, it's conceivable someone else could submit a more attractive alternative plan. However, availability of funding, ability to proceed quickly and an existing, and often approved project plan tend to minimize the risks for the developer who initiates a condemnation request to the City.

Again let me state that I am not aware of any intent, rumored or otherwise on the part of the City, or any private party to begin any actions under the referenced sections of the code.

JDC/mjs

encl. as

IN THE IOWA DISTRICT COURT IN AND FOR SCOTT COUNTY

GLEN O. HANCOCK,	)
Plaintiff,	) PLAINTIFF'S SECOND
vs.	) MOTION FOR
CITY OF DAVENPORT,	) SEPARATE
et al.,	) ADJUDICATION OF
Defendants.	) LAW POINTS
	)
	) LAW NO. 70078

COMES NOW the Plaintiff, Glen O. Hancock, by and through his attorney, John T. Flynn of Brubaker, Flynn & Darland, P.C., and for his Second Motion for Separate Adjudication of Law Points, pursuant to Iowa Rule 105 of I.R.C.P., states to the Court as follows:

1. The Uniform Housing Code

adopted by the City of Davenport (Section 15.32.170) adoptes the Uniform Fire Code.

2. The Uniform Fire Code, Section 14.102 applies to unoccupied buildings.

3. On September 4, 1984 the Vale Apartment Building was an unoccupied building as defined by the Uniform Fire Code.

4. That on September 4, 1984, the Vale Apartment Building complied with Section 14.102 of the Uniform Fire Code.

5. That no other section of the Uniform Fire Code applies to unoccupied buildings.

DATED this 20 day of February, 1987.

GLEN O. HANCOCK

By: _____

John T. Flynn
BRUBAKER, FLYNN &
DARLAND, P.C.
630 Union Arcade Building
Davenport, Iowa 52801
(319) 322-2681

Copy to: Michael J. Meloy
226 W. Fourth Street
Davenport, IA 52801

George B. Norman
P.O. Box 1117
Rock Island, IL 61201-1117

DAVENPORT CODE SECTION 15.32.170

UNIFORM FIRE CODE

(C) Section 14.102. Occupied and Unoccupied Buildings.

(1) Vacancies. When any portion of a building containing occupied dwelling units and/or guest rooms is vacant such vacant portions shall be maintained secure and under control of the owner, his agent, or other responsible person in order to prevent entry by unauthorized persons. Failure to maintain such security shall be immediate and sufficient cause for the Building Official or Fire Marshal to issue a citation.

(a) Failure to maintain security shall include but not be limited to the following:

(i) Unsecured exterior openings into

vacant portions of a building immediately accessible to the public at grade or unsecured openings into vacant portions of a building immediately accessible by means of landings, roofs, stairs, fire escapes, porches, platforms, or other areas which are accessible to the public from grade level.

(ii) Unsecured hatchway doors, scuttles, ventilation openings, or other readible means for obtaining entry to vacant portions of a building.

(iii) Broken or cracked glass.

(b) Unoccupied Buildings. Whenever an entire building remains unoccupied for a period of more than 30 days and is not maintained as provided in subsection (a) (1), it shall be immediate and sufficient cause for the

Building Official or Fire Marshal to issue a citation.

(2) The citation shall be punishable by a fine imposed by the magistrate not to exceed $100.00.

IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

(Filed July 22, 1987)

GLEN O. HANCOCK,	)	
Plaintiff,	)	EQUITY NO. 70078
vs.	)	
CITY OF DAVENPORT,	)	MEMORANDUM IN
et al,	)	SUPPORT OF
Defendants.	)	TESTIMONY

COMES NOW, the Plaintiff, Glen O. Hancock pro se, and submits the following:

1. The Trust Department of Davenport Bank and Trust Co. testified under oath that Glen O. Hancock was behind on payments to the Vale Estate.

2. Robert Oaks received exhibit 1 (one) on or about August 26, 1983. The payments to the Vale Estate were current to September 22, 1983.

3. Mr. Oaks explained to the jury

that the map of the Vale Apartments was drawn as a parking lot due to payment arrearage.

WHEREFORE the Plaintiff, pro se submits this memorandum.

GLEN O. HANCOCK

By_____

Glen O. Hancock, pro se
P.O. Box 1106
Davenport, Iowa 52805
(319) 323-1208

Copy to:

Michael J. Meloy
Legal Department
226 West 4th Street
Davenport, IA 52801

John T. Flynn

630 Union Arcade Building

Davenport Iowa IA 52801

John D. Stonebraker

3432 Jersey Ridge Road

Davenport Iowa 52807

George B. Norman

208 18th Street

P.O. Box 1117

Rock Island, Ill. 61201-1117

Mark E. Liabo

P.O. Box 998

Ceder Rapids, Iowa 52406-0998

IN THE IOWA DISTRICT COURT

FOR SCOTT COUNTY

CASE NO. 70078

(FILED: June 24, 1988)

GLEN O. HANCOCK	)	
Plaintiff	)	
vs.	)	"Motion for
CITY OF DAVENPORT, et al	)	new trial
Defendant	)	by Plaintiff
	)	Pro Se"

DIVISION I

COMES NOW THE PLAINTIFF, Glen O. Hancock, and for cause of action against the City of Davenport, respectfully states to the Court as follows:

1. That the Plaintiff, Glen O.

Hancock, is a resident of Davenport, Scott County, Iowa.

2. That the Defendant, City of Davenport, is a municipal corporation operating under and by virtue of the laws of the State of Iowa.

3. That the City of Davenport is operated by it's duly elected City Council.

4. That Glen O. Hancock was the owner of certain property traditionally known as the Vale Apartments Building located at 210 E. 4th Street, Davenport, Iowa.

5. That on September 5, 1984 at the regular meeting of the City Council of the City of Davenport, by roll call vote, adopted a resolution dated September 5, 1984, condemning the

property known as the Vale Apartments.

6. That on September 5, 1984 at the regular meeting of the City Council, the City Council voted upon a second resolution and approved the award of a contract to Gravenmeyer Contracting Co. to demolish the Vale Building commencing on September 10, 1984.

7. That the actions of the City of Davenport were illegal and in violation of the Plaintiff's rights, including but not limited to the following specifics:

A. That the actions of the City of Davenport denied Plaintiff due process of law as guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and Article I, Section 9, of the Constitution of the States of Iowa and Title 42 U.S.C.A.

Section 1983.

B. That the Defendant, City of Davenport, illegally exercised summary abatement proceedings to demolish the Plaintiff's property on the basis of the allegations that the building constituted a "public nuisance" but with no evidence an emergency condition existed in violation of Article III, Section 1 and/or Article V. Section 6 of the Iowa Constitution and Chapter 364 of the Iowa Code.

C. That the actions of the City of Davenport constitute a condemnation of the Plaintiff's property by the City of Davenport for undetermined purposes without payment of just compensation therefore in violation of the Fifth and Fourteenth Amendments to the

Constitution of the United States and Article I, Section 18 of the Constitution of the State of Iowa and Title 42 USCA Section 1983.

8. That the actions of the City of Davenport as set forth above, have been the proximate cause of damages to the Plaintiff Glen O. Hancock.

9. That the Plaintiff, Glen O. Hancock, has suffered damages in a fair and reasonable amount to be determined by a jury as a proximate result of the actions of the City of Davenport, Iowa for the following injuries:

A. Depreciation of the Vale Apartment Building;

B. Emotional distress;

C. Pain and suffering;

D. The cost of defense of the

actions brought by the City of Davenport;

E. Loss of wages past, present, and future;

F. Loss of rental income, past present and future;

G. Loss of developmental potential of the Vale Building;

10. That pursuant to Chapter 613 A.2, the City of Davenport is liable for the actions of the members of the City Council who illegally voted to condemn and demolish the Plaintiff's property, and the actions of the employees and agents of the City of Davenport, namely, Phillip Testa, James Conway, and Bruce Romer, who while acting within the scope of their employment or duties, wrongfully prosecuted the Plaintiff in

this action for civil wrong incurred upon Glen O. Hancock, and the injury to his personal or property rights based upon their negligence, or errors and omissions, or breach of duty, or perjury under oath, or denial of any right under any constitutional provision, statue of rule of law.

11. That this action was filed within the proper time frame by former Attorney, John Flynn, of Davenport, Iowa, and within the six month parameter of the constitutional infraction according to 613A.5 of the Code. The petition was filed in equity March 4, 1985.

12. That Plaintiff is entitled to his damages and his legal fees under Title 42 USCA, Section 1983, Section

1988, for violation of his constitutional rights.

13. That on August 20, 1986, the named defendants were found in violation of the constitutional rights guaranteed to the Plaintiff by federal law by the Supreme Court of the State of Iowa, Hancock vs City of Davenport 392 N.W.2d, 472 and that decision in regards to damages for these illegalities was "without prejudice to Hancock's right to assert that claim in a separate original action."

14. That on June 26, 1987, a final judgement of a jury trial in a equity action was filed by the trial court in the form of Special verdict, returning a unanimous verdict against all defendants, except James Conway, and an

award was entered of $17,235.00 in damages under 42 USCA Section 1988. Judge Burns signed the judgement entry.

15. Liability was established by jury of all the defendants for said infliction of constitutional infraction with the exception of James conway.

16. Grounds for this Motion for a New Trial are based upon the following facts:

A. As per a letter dated 4/4/86 by Attorney Flynn, Flynn had established earlier in a communique to Attorney John A. Hellstrom, to whom the letter was sent, (attached Exhibit A), his decision of non representation to Glen O. Hancock, and further, according to (attached Exhibit B) Flynn illegally represented to the court he was the

attorney of record and sought withdrawal through court and was granted same.

B. No notice of Flynn's representation denial was received by Plaintiff, Glen O. Hancock, either certified or by regular mail. Exhibit A was received by Plaintiff's mother Jane Hancock, in Phoenix, Arizona, and the contents of which, showing Flynn's statement of non representation, was not discovered by Plaintiff until at least two months after trial. Jane Hancock will supply an affidavit under penalty of prejury to the court if requested.

C. The attorney who entered an appearance, Mark Liabo of the Tom Riley Law Firm in Cedar Rapids, Iowa, in this case on March 2, 1987, did so under the auspices of Attorney John Flynn, as

stated by Plaintiff and filed in Denial of the Bill Particulars. (Exhibit C) Liabo had no contract with Plaintiff assuring his representational credibility and at all times was representing Flynn, and furthermore as provided by affidavit, (Exhibit D) made false claims of any fee or representation with Plaintiff; and later did so file said waived claims on lien July 28, 1978 (Exhibit E). Plaintiff also has in his possession, and upon request of the court, demonstrate a video tape made showing Liabo's waiver of attorney fee arrangements. (Exhibit F (Video) to be supplied upon request of court). Plaintiff asserts herein that these elements, but not limited to these elements are material evidence newly

discovered and could not have been reasonably or diligently produced at the trial pursuant to Rule 252, Iowa Rules of Civil Procedure and give rise to a Motion for a new trial within the one year prescribed by Rule 252 (B) (F).

D. Pursuant to Rule 252 F I.R.C.(. as filed by Plaintiff, July 22, 1987, and designated Memorandum in Support of Testimony, Plaintiff's locating of the existing evidence that serves to demonstrate perjury in a court of Law and jeopardized Plaintiff's rights to an impartial jury through the hearing of perjured evidence. This check was not located until after testimony of Bob Oakes during the trial and Liabo would not introduce this evidence upon strenuous assertion by

Plaintiff. (Exhibit G)

17. Attorney Martin for the City stated through his most recent Supreme Court briefing for the defendants, that, this case 70078, is an action at law. Plaintiff denies the applicability of this conjecture on his part, but without disclaiming the right to appeal and leave the final determination of that question in the judgement of the higher courts through extensive and complete de novo review of the entire proceedings from the inception of the matter, Plaintiff presents Exhibit (H) copy of docket, case 70078, and pursuant to Rule 252 IRCP (a), points out to the court that the docket is designated below under "kind of action" as a equity case. Plaintiff invokes his

constitutional rights of appeal to the Supreme Court in this matter as to the determination of the conjecture opinion of Attorney Martin, or the possible designatory error of the clerk, Plaintiff denies legal error, but the matter was plead by the defendants and the appeal process will discover the legal question. The lower courts ruling shall have no effect on the legal question of this point in controversy of the possible application to 252 (a) IRCP to the disposition of review by the Supreme Court, Plaintiff hereby requests an entire and comprehensive court review of the authentication of transmitted records and existent docketing of, but not limited to all motions and services, exhibits of trial, jury instructions,

court orders, all resistances and liens and notices as pursuant to Article XI Rule 901 (a) Iowa Rule of Evidence, Rule 901 (B) 10. In other words, this pro se representative respectfully requests Scott County docketing and court authentication guidelines of impartiality to be applied, in the name of fair justice, to all the evidentiary records of this litigation in light of the controversy of docketing and the entries therein represented in case 70078 being expressed in the Supreme Court of Iowa.

18. Attorney Liabo has not returned into the possession of Plaintiff any records of this case received by him through Flynn or from the courts Plaintiff, pursuant to Rule 166 IRCP

reserves the right to perpetuate the depositions taken in this matter of all parties deposed by both sides of the litigation. Pursuant to Rule 402 "all relevant evidence is admissible" Plaintiff seeks to use this evidence perpetuated, but not exclusive to only this evidence, if a new trial is granted. Plaintiff, pursuant to Rule 802 (14), but not limited to that subsection, seeks to receive confirmation through deposition all alleged hearsay in this matter, and also seeks his rights to the entrance of former testimony of actors in this matter pursuant to Iowa Code Section 622.97 and Rule 144 IRCP also 12 IRCrim.P and Rule 804 (b) (1). Plaintiff also seeks the application of

any proper Disciplinary Rules and Ethical Considerations as they apply to the attorneys in this matter, not limited to Plaintiff's alleged attorneys.

19. Acquiescence to representation at trial is not proper defense to the actions of these attorneys, Liabo and Flynn, in that this action (70078) was enjoined with a companion USC Section 1988 attorney fee claim and by essence of the prejudicial verdict award of the jury, Plaintiff would have no cause to know the outcome of awarded fees to these people until after the trial, and therefore establish yet another criteria for evidence not through reasonable diligence discovered. IRCP 252 F.

20. Claimed prejudice (Exhibit I) of

the (jury offering) of Scott County and Davenport exascerbated by negative Quad City Times Articles has ripened in several ways and constitutes underlying public record proof of material evidence not discoverable through trial: 1) There have been more negative and damaging articles after trial, (evidence supplied upon court request) 2) In an editorial the foreman of the jury made statement of presupposed opinion of the Plaintiff's property after trial (evidence supplied upon request of the court) 3) Activity as of December in the immediate vicinity of Plaintiff's property proposing the razing of the Lee Enterprises building for a parking ramp and the dealing with Project Rejuvenate Davenport and the City of Davenport,

specifically Tax Increment Finance District (3.36.020) approved May 4th, 1988, is material evidence that could not with diligence have been presented at trial. Plaintiff's original claim as cited in case 68966, was to the effect that the adjacent landowners needed his property for recoup on their Superblock investments, in the form of parking or otherwise, and used the City through James Conway, but not limited to him, to illegally obtain same. 68966 gave rise and substantiation to cause 70078.

21. Defendants filed cross appeal July 28, 1978 and dropped same April 11, 1988. This was filed frivolously in that it was filed only to hamper legal progress herein and confuse the issues, it was dropped after the Plaintiff filed

his Brief to the Supreme Court of Iowa, however, Liabo retains the records of the contents of said cross-appeal and Plaintiff knows not the terms objected to by the defendants.

22. In the scope of the parameter of the entire case of the legal and illegal path the municipality of Davenport has chosen with Plaintiff. Plaintiff hereby includes his claim for malicious prosecution in the evidentiary records of case 71281, and 73265, and seeks a fair, discovery in those actions, of malfeasance to the current litigation to be effected in the form of proof of mal feasance or abuse of process or malicious prosecution, but not limited to that specific scope, and it's harmful effect on this instant case.

23. Pursuant to the evidence submitted in case 68966, Plaintiff requests all authenticated exhibits and records of same and hereby specifies they will show conflict of interest by Attorney George Norman, as he was a member of the Downtown Davenport Development Corporation, and presently represents James Conway. The DDDC was the interface to the City of the political vested interests that controverted the City's action of singling out Plaintiff's building for selective enforcement and the perpetrators of the heavy burdens Plaintiff has had to incur.

24. Plaintiff requests this trial to be on the issue of damages only, and a retrial on the liability of James

Conway. Plaintiff also asserts his rights to remove this action from this venue due to the entire prejudicial circumstances of this case.

25. All before mentioned defects in the alleged representative of Glen O. Hancock shows serious violations of Constitutionally provided protections to Citizens of the United States of America.

26. Plaintiff files this motion for a new trial for the expedient and fair disposal of this litigation, and retains his rights protected by the Constitution of the United States of America and the laws of the State of Iowa in his appeal rights of findings of this court and any interlocutory affect they may have upon his current Supreme Court Appeal

presently being considered.

27. Plaintiff files this action pro se and requests constitutional protection to the matter of keeping within the spirit of the law and within a good faith boundary of representing only the facts as they happened.

28. Plaintiff was denied proper discovery of the application of federal codes specifically the National Historic Preservation Act 16 USC(470 F, commonly referred to Section 106, The Department of Transportation Act of 1966 Section 4F as they apply to a Nationally Registered Historic Building.

29. Plaintiff requests a hearing in a timely manner on these issues pursuant to Iowa and Federal law.

Glen O. Hancock-
pro se
P.O. Box 1106
Davenport, Iowa
52805

Copy to:

Michael J. Meloy
City Hall
226 W. 4th Street
Davenport, Iowa 52801

George B. Norman
1700 Union Arcade Building
Davenport, Iowa 52801

In the Supreme Court of Iowa

(Filed January 11, 1989)

Glen O. Hancock) Appellants Reply
Plaintiff v) Brief
City of)
Davenport, etal) Scott County No. 70078

Appeal from the District of Scott County

Honorable J.L. Burns, Judge

From Pg. 1

Plaintiff through his appeal. has shown evidence of, and demonstrated the "hurried" activity of the Scott County justice system in trying to force these complex issues, to the destain of Plaintiff. This impulsive style of the local courts manifested itself throughout the proceedings, jeopardizing the "real" issues of discovery, and forcing Plaintiff into court, vulnerable in an unjust and untimely manner, without an attorney,

without financial wherewithal to carry on in a fair progression of protecting his civil rights. Plaintiff asserts that misuse of

From Pg. 2

the system in Scott County assured his financial instability for the use of his rival litigants. Local courts failed to allow impartial construction of justice through these, but not limited to plead transpiring.

From Pg. 2

In considering this case, reviewing court is made cognizant that actions after Flynn's public statement by letter (App.p. 80_ of his status to former client Hancock, disallow the best interest legal protection to Plaintiff and Plaintiff fairly reserves the right to deny as proper or just, any litigatory subservience to Flynn's activities within

that time parameter, as it applies to this entire lawsuit. Acquiesence till the conclusion of trial is not enough criteria, in this case, to establish representational status of the attorneys. This was a USC 1983

From Pg. 3

action with the overtones of a companion USC Section 1988, known as a lawyers fees action, and as stated by Appellee: "to attorney's fees incurred" (Appellee brief p.3) limits the scope of damages. Flynn commissioned Liabo, as his own intermediary, for recovering from the work he had done on case 68966, and through the ensuing trial. Plaintiff asserts the two conspired with the defendants, in the assured loss of rightful damage discovery: presentation in open court of unfair parameters of evidence, limited in depth as to what had been previously established

before other courts, diverting an already prejudiced jury, under the guise of "expertise" and their "trial" strategy, and usurping subsequent award to Plaintiff. Mark Liabo had no contract with Plaintiff and Hancock denies Appellees ascertain (Appellee brief p.4) he was represented by these attorneys throughout most parts of instant case (App.p.47 item 2).

From Pg.5

Liabo has retained all records belonging to Plaintiff (App.p.93,93). With the appearance of such a major discrepancy, if that is the truth of this case designation argument, Plaintiff is compelled to objectively verify authenticity of all transmitted records, existence docketing, motions, resistances, court orders, depositions, trial transcripts, exhibits at trial, jury instructions, but not

limited to these legal documentations of the transpiring of instant case in Scott County Iowa.

From Pg. 10

Second, the Quad City Times can be directly linked through it's board of directors as a political prominent of a Parking Ramp (LETTER FROM LEE PRESIDENT-Downtown News-Vol. 5 No. 5 March 1987) and Fund Raiser for the Adler Theater a major part of the Superblock Development.

From Pg. 13

As to the question of "affidavit", it is submitted to this court that the alleged attorney, Liabo, made no effort to inform or procure same and furthermore he made no effort tc inform Plaintiff on his constitutionally guaranteed rights of Federal jurisdiction in instant case. Monroe v Pape 365 US 167,183, Light v Blackwell 472 F.Supp, 333. Flynn never

gave that timely advice either: why should they make Plaintiff's cause more fair? They were not representing him to the first place. On the other hand they were protecting the defendants by keeping the cause local. Liabo premeditatively went to court for the venue issue emptyhanded and that is the reprehensible. (DR1-102 (5), Canon 2, EC2-B, DR6-101(A) (2&3), DR 7-10 (A) (1&3).

From Pg. 14

The issues at the heart of this lawsuit are 1) statutory protection of historic properties and improper discovery of same 2) the right to protection by legal council in a "closed" community due to the circumstances of political contravention 3) subjection to malicious prosecution and prejudice by local officials and the body politic due to subversion and ignorance.

From Pg. 15

Plaintiff herein asserts that he was totally unprotected as to the Statutory Protections provided to Historical Buildings by the Federal codes and denied not only proper time for discovery of same. (I.R. Evidence 103 (a) & 104 (b) but the legal fortitude vis a vis fraudulent attorneys (in this state).

From Page 15

Plaintiff herein raises a constitutional issue as to the State courts disposal of the matter in it's entirety

From Page 16

The historic Burtis Kimball Opera House is adjacent by party wall to the Plaintiff's property and may, in the opinion of the Secretary of the Interior, constitute a "historic district" where it applies herein. It cannot be said that timely raising of the "historical" significance of Plaintiff's property has not been made.

It was raised by Flynn in his briefing on 68966 (rule 804(b)-1&5 I.R. Evidence and citing of Chapter 303 of the Code of Iowa, as well as reference to the placement of the property on the National Register in the Hancock ruling filed by this court. All parties know and had cause to know.

From Pg. 17

Certain protections are awarded National Register properties under Section 106.16 USC Code 470 F. The federal agency cannot passively rely on other agencies to satisfy it's responsibilities. Hough v Marsh 557 F. Supp. Supp. 74, 87-88 without due process notice or any flagging of proposed planning the city undertook the Superblock development and did not provide Plaintiff on the Federal government, to the best of Plaintiff's knowledge, with any compliance to Federal law if there was indeed federal money involved in the

undertaking. On the contrary the city built the convention center in close proximity to the Historic Burtis Kimball House without any interface with the Plaintiff as to plans or obstruction of riverview, including the closing of Perry Street to facilitate the "rivercenter" building. (Department of Transportation Act 4-F) There was no NEPA or Environmental Impact Reviews undertaking even though the building was listed on the National Register at the time of the Superblock construction. Discovery of federal monies or approval was denied proper redress due to the lower courts procedural history in instant case. Fair and legal investigative discovery in this case in the state of Iowa.

From Pg. 18

under the umbrella of Federal Constitutional compliance, may well

necessitate a Section 106 review.

From Pg. 18

The property is located on the rail line connecting the Rock Island Arsenal, an "undertaking" may involve military operations, that adjacent line is active. Romero-Bercelo v Brown 643 F.2d. 835. When a federal agency funds or gives it's conditional imprimatur for a project it may trigger a section 106 review. National Center for Preservation Law v Landau 496 F. Supp. 716, Save the Courthouse Committee v Lynn 408 F. Supp 1323 Elv Velde 497 F2d. 252. By closing off the street. Perry Street directly across from the Landmark, involvement of federal subsidations of streets of roadways is necessitated for discovery of potential 106 and not limited to that action as the Davenport Department of Transportation Act and Stop H-3 Association v Coleman 533

F.2d 434. If the federal government holds discretionary authority over a project, such as funding of roads or subsidation in the downtown area of Davenport, 106 must be complied with through every phase. Morris County Trust for Historic Preservation v Pierce 714 F.2d 271, WATCH v Harris 603 F.2d. 310 Thompson v Fugate 374 F. Supp. 120.

From Pg 19

The archaeological significance of the location of Plaintiff's property was also passed over in fair discovery. Indian tribe existed along the Mississippi in ancient ties, and any agency of federal attachment or funding must comply with the Archaeologic and Historic Preservation Act 36 CFR 800.1. The SBA was involved in certain fundings of the Blackhawk Hotel, owned by Davenport Bank and Trust and directly across the street from

Plaintiff's property. Discovery of the specific allocation of fundings and monies spent may also trigger a 106 review. This presents credible weight to any perjury by an officer of Davenport Bank and Trust, especially in light of the fact Mr. Dakes had "memo" level discussions of Plaintiff's property, without Plaintiff's knowledge indefinite violation of fiduciary responsibility (App.p. 73 to 76)

From Pg. 20

On January 10, 1984-Phil Testa orders termination of the water service to the Vale: on January 12 or 13 1984-Phil Testa tells Dan Palmer (owner of Burtis Opera House) that the city will use the site for a surface parking for 4 to 5 years and then build a parking ramp: (conflicting testimony); on January 16, 1984-city council holds it's first "hearing" on the "condition" of the Vale: Spring of 1984-

city sells bonds to raise money to demolish the building.

From Pg. 21

There was no contract with Liabo, there was no notice of non-representation by Flynn; the court ordered us into trial (App. p. 27). Was the Plaintiff expected to give up? Was the Plaintiff expected to file his own motions that may have severely crippled his case as a layman? Was 30 years of Plaintiff's family holdings to be lost to unscrupulous behavior? (Appellee brief p.15) Ponder the Federal protections just cited. He was prepared to win his Section 1988 case for Flynn. That transpired.

From pg. 22

(Appellee brief p.18) Plaintiff asserts, that ultimately this action can be enjoined to the level of class action under Federal Code (Section 106) Residents

of a town are considered users of the property and beneficiaries of the environment that it's unchanged character produces. Legal interest in preserving the property thereby accrues to each of the residents. Edwards v First Bank of Dundee 393 F. Supp. 680, River v Richmond Metropolitan Authority 481 F2d 1280

From Pg. 23

Also Urban Renewal Projects undertaken with HUD is a major federal action requiring nepa compliance Aertsen v Harris 467 F. Supp 117 at 118.

From Pg. 23

Application of these federal codes and protections provided by federal law are submitted for this court as to the constitutional application to Chapter 303 of the Code of Iowa. This case happened in the State of Iowa and probably is the most significant Historical Preservation case

in Iowa. It is a fact that according to Mr. Ray Christian, the SHPO of the state of Iowa, (Rule 804 I.R. Evidence), a Section 106 review has not transpired in the state of Iowa. Discovery of breach of federal law in the violation of Plaintiff's rights will clarify the serious level of tort-feasance as it applies to a municipalities improper and illegal activities. Crosby v Young 512 F.Supp. 1363, Colony Federal Savings and Loan Ass'n v Harris 482 F. Supp 296, National Center for Preservation Law

From Pg 24

v Landrieu, supra.

From Pg. 24

The jurors deserved to know evidence from the 68966 action to fairly reach a verdict, absent prejudice. In 68966, Defendants Exhibit 1-Plaintiff wrote a good faith letter in early 1984 explaining

his approach in the preservation of the building to the city, and specifically stating that if feasibility was not possible he would tear the building down and create a private parking business. Plaintiff's Exhibit 3-The Convention Center Feasibility Study (RERC) specifically calls for 90 to 100 additional hotel rooms when Superblock was to be completed; as expected, the study favored the addition of those rooms to either the Blackhawk Hotel or the Mississippi Hotel, which houses the Adler Theater. (p 8 RERC) This verified the hospitality industry

From Pg. 25

Feasibility in 1984. Also the study concluded an additional $800,000 annually would be spent in food and beverage near Superblock; a good location for a hotel restaurant). On p.12 of RERC, the study

says "A supporting element vital to the success...2000 space deficiency within 600 feet of the center. Is this the tort "incarnate"? Plaintiff's exhibit (2);The parking study spells out the money recoup per space and demands. (P.43): if feasibility as per that letter would not have been possible, a parking expert was arranged to establish that 100 to 115 "valet" spaces on an asphalt lot would create a successful parking "going concern", recouping hard cash for several years by now.

From Pg. 25

the Marcou O'leary Study noted: "In the year of greater recognition...downtown presents a collection of historic structures not found in other areas of the community." Number 1 objective: preserving the buildings of historic and architectural integrity. Did the city use

this study and falsely represent to the Federal government. HUD and UDAG, to receive funding downtown?

In the Supreme Court of Iowa

(Filed on or about January 20,1989)

Glen O. Hancock) Applicants Application
Plaintiff v City) for Further Review
of Davenport,)
et.al.) Scott County No. 70078

Appeal from the District of Scott County

Honorable J.L. Burns, Judge

From Pg. 2

When issues of basic constitutional safegaurds are raised, under principles laid down in applicable federal and state

From Pg. 3

decisions,such issues requires a court to make it's own evaluation of the totality of the circumstances under which those constitutional rights was made. Dickenson Co v City of Des Moines Iowa 347 NW2d 436 Schneckloth v Bustamonte 412 US 218, 225 Sheppard v Maxwell 384 US 333,362..

From Pg. 4

Within the public psychological determination the Plaintiff Glen O. Hancock, cannot be separated from the "presumed public eyesore quality" of historic building, an consequently the public mind would not isolate or separate Glen Hancock from erroneous blame, it would be an integral part, a "play within a play". "When the spotlights glare comes to rest on a certain individual in a matter of large public interest involving widespread and intensive publicity of a prejudicial nature..."quoting Pollard v District Court of Woodburry County 200 NW2d 519 at 521)

From Pg. 5

The sequestered voir dire of jurors "is not unusual or view with suspicion" In re:Greensboro News Co, 727 F2d, 1320,1323 (4thCir. 1984)

From Pg. 6

When the exercise of free press rights actually tramples upon 6th amendment rights (in this case 14th amendment equal protection of the law) the former must yield to the latter. Justice Frankfurter observes "trial by newspapers" too often differs from the real trial court. Pennekamp v Florida 328 US 361.

From Pg. 7

It is alleged the story not told by the Quad City Times is that they are directly involved with the downtown power players by their location geographically at the very least, and "voice"a clever "negative tone" to the destain of the plaintiff and confusion of the body politic. It is a fact and mentioned in Plaintiff a motion for new trial (see Motion for a New Trial herein Annex p.6 subsection 20-31), that the present building of Lee Enterprises is

to be razed to facilitate the much need parking lot for Superblock. "In a civil case, an issue may be proven

From Pg. 8

by circumstantial evidence if it is such as to make the theory of causation probable, not merely possible, than other theory" State v Williams 179 NW 756

From Pg. 9

The Court of Appeals erred in it's initial conclusion of fact regarding evidence submitted in Plaintiff's appendix. The Court of Appeals states that it's review of news articles was limited to exclusively a "pair of prejudice" as a result of the "newspaper articles" shown. It is clearly indicated by Plaintiff in his Appendix Table of Contents that page 58 is designated as "Public Notice-Fee Award.

From Pg. 9

It is asserted again in Plaintiff's brief that the only notice he received regarding the facts surrounding the payments of attorneys in this case was through the newspaper. Page 58 is a copy of a press release by Plaintiff's brother (a copy was sent to Justice Wolle in February 1988) and further proof that the intention was not to exclusively submit only these articles is clear in the article appearing on the bottom. That specifically was from the Des Moines Register, that newspaper never have been alleged as to prejudice or conflict of interest in instant case.

From Pg. 12

Evidentiary issues were not preserved for appeal where they were not raised in the motion for new trial. Goodrich v McCannel 382 NW2d 235 It is now alleged the trial court erred in the ruling on that Motion for New Trial (see Order Annes p.8) for

these reasons: 1) The original notice was served to the clerk and mailed to the defendant's attorneys Meloy and Norman, if the service is indeed errant as Judge Briles alleges, the maid defendant, the City of Davenport, has been duly served proper notice through the legal department and Mike Meloy, and point 2) Judge Briles should have disqualified herself form participating as has ben alleged by Plaintiff in his brief she made a derogatory remark about him in chambers within the presence of a witness whose name Plaintiff will supply herein: Attorney John Hoekstra, 1705 2nd Avenue, Rock Island, Illinois, 309-788-5661. Participation is adverse to Canon 3 (C)-1 (a) Judicial Conduct. "Only when the evidence clearly shows an abuse of discretion by the trial court will we interfere with a ruling upon a motion for

a new trial. "Waddell v Festa Feeds 266 NW2d 29.

From Pg. 13

It is alleged in Plaintiff's briefing and now preserved in the evidence annexed herein (Annex p. 10-exhibit A) Attorney Flynn, former council to Plaintiff who withdrew tow weeks before instant trial state in a letter discovered after the fact of trial (Annex p.3 under sub-section 16-b) this paragraph: As I mentioned to you previously, I will no longer be representing Glen Hancock..." This instrument is dated April 4, 1986 and is clear evidence that the entire matter was falsely brought. It was stated in Hancock, supra instant action was "dismissed by necessary implication" and required a "separate original action".

From Pg. 14

Flynn failed to prepare for this complex litigation, yet he lead Plaintiff to believe he was involved in this litigation by making various filings. Plaintiff alleges these actions were part of a larger conspiracy to keep this cause local. In State v Hendron 311 NW2d 61 (1981) the conduct wad equated with failure to make a defense. Presently the court applies the "cause and prejudice" standard adopted in Wainwright v Evkes 433 US 72.

From Pg. 14

By failing to court in the hearing on the change of venue issue with "any" evidence including affidavits and prejudicial news articles

From Pg. 15

nothing, he left Plaintiff totally compromised and within the jurisdiction necessary to see his damage issues totally destroyed.

In the Iowa District Court for Scott County

(Filed March 17, 1987)

Glen O. Hancock) Defendant Conway's
Plaintiff v City) Response to City of
Davenport) Supplemental
et.al) Interrogatories
) Propounded to
) Defendant

From Pg. 13

List any and all feasability studies and planning studies prepared for the City of Davenport in the last fifteen years and state how they are funded and whether any federal funds were spent in obtaining them, including but not limited to; a) Marco O'leary - 1975 b) Wilber Smith - parking study 1981 c) Real Estate Research

Corp. Study- 1981 d) Wilber Smith Updated Parking Study

ANSWER: Defendant Conway has no knowledge of any such items. The City of Davenport has copies of , The Marco O'leary Study, The Wilber Smith Parking Study, The Real Estate Research Corp. Study, The Wilber Smith Updated Parking Study.

In the Supreme Court of Iowa

(Filed March 21, 1988)

Glen O. Hancock) Appellants Brief
Plaintiff v City) and Argument and
of Davenport) Request for Oral
et al.) Hearing

Supreme Court No.87-1022 Scott County No. 70078

Appeal from the District of Scott County
Honorable J.L. Burns, Judge From Pg. 8

It is common knowledge that the Plaintiff's building is located directly across the street from The Blackhawk Hotel, the River Convention Center, and the restored Adler Theatre. The vested

interest in these properties were members of the board; James Conway was the director of the Downtown Davenport Development Corporation and has been stated by him in at least one record of this case that the board of directors establishes policy and he administers policy. Mr. Conway also worked with city officials

in a capacity of coordinating downtown projects. It is also common knowledge that the Times Newspaper and Lee Enterprises is located within close proximity to Plaintiff's property, (within two blocks), and that newspaper is well established as the Quad Cities major daily periodical.

From pg.9

Plaintiff's alleged attorney, John Flynn, withdrew on the "eve" of the civil rights trial (App. p.25) and was replaced by Mark Liabo of the Tom Riley Law Firm in Cedar Rapids, Iowa. Flynn agreed to proceed in the case as the witness. Plaintiff did not have a contract with the Tom Riley Law Firm and specifically Mark Liabo. Flynn was authorized by the judge to withdraw and be a witness at the same time Plaintiff was given only seven days to secure consul (App.p. 27) or Flynn's position would be reconsidered; Plaintiff was again seeking proper consul as the clock ticked rapidly toward March 11 at 5:00 p.m. the close of discovery. (App. p.27)

From Pg.9

In early March, 1987, Plaintiff was at the court house in Scott County and only a few

days before the trial was served with a notice of sheriffs sale for approximately $20,000. to be paid within about thirty days. This note overdue was drawn on a bank in Denver, Colorado and arranged by Mr.Rick Reagan, son of Donald Regan, the secretary of the treasury, U.S. Government. The case is numbered 72181, Scott County.

From Pg. 11

There was significant assertion of that right based on the fact that newspaper coverage of the condemnation was substantial, and did not paint a clear picture toward the Plaintiff's property. These articles are public record and Plaintiff includes them here with the following citation. (App. P. 77,78) Storer v Brown 415 US at 738-740 "to assess

realistically whether the law imposes excessively burdensome requirements...upon facts which do not appear from the evidentiary recording the case." These articles generally accentuated a "wrecking ball" mentality. Again the source is the Quad City Times and Lee Enterprises.

From Pg. 14

The jury was lead to believe that the Plaintiff was behind on his payments to the Davenport Bank and Trust Company, Vale Trust Dept., Mr. Oakes stated in open court a false statement and although strenuously urged by Plaintiff to object and set the record straight, Mr. Liabo discredited the weight of Plaintiff's assertions. Plaintiff was not behind in his payments to the bank. (App.p.50.60).

This error enhanced the already existent prejudice by the jury. Rutten v Investors Life Ins. Co. of Iowa, 1966, 258 Iowa 749,140 NW2d. 101

This very important misstatement of the facts carries deeper significance: it is relevant to crucial evidence regarding Plaintiffs theory of conspiracy, that defendant James Conway, was acting on behalf of the DDDC (Downtown Davenport Development Corporation) to secure Plaintiff's property for a parking lot or other unspecified usages. To secure exactly for who, is still open to investigation. If the building was to be condemned for a parking lot, in the September 7, 1983 letter (App.p. 73-75) please consider the verbiage: "...particularly with regard to the size of the building." Jacobson Supra, State

Supra.

In the January 10, 1984 letter (App. p.76) please consider the middle paragraph:..."tend to minimize the risk for the developer who initiates a condemnation request to the city." Kilroy v Board of Review of Benton County, 1975, 226 NW2d 814, Rouse v Rouse 1970, 174 NW2d 660

From Pg. 15

Once again Plaintiff would like to say that the Superblock project, and developments across from Plaintiff's property, were essentially developed and funded by Davenport Bank and Trust Co. in conjunction with Blackhawk Hotel, and the River Center, was a joint city-private sector venture; inclusive they both had severe parking shortages at the time of

municipal illegality. The vested interests in those properties, including the Adler Theatre, were members of the board of directors of DDDC, James Conway's superiors. "...unless the preponderance is very great, or so strong as t justify an inference that the court was mistaken, or was influenced by passion, prejudice or corruption, or failed to consider all evidence. Robinson v Poe, 1881, 56 Iowa 73,8 NW 751, White v White, 1882, 60 Iowa 203,14 NW 253., State Supra

From Pg. 22

The presidential connection is not vague, and it only serves to enhance greatly the value of the building the Plaintiff was cheated from developing. Mr. Reagan's roots as a radio announcer were part of

the history of this building. His technocratic artistry in the 1930's as a radio sportscaster and subsequent rise to show business fame, takes away the carnival macabre of an actor being elected to the United States presidency. Radio was a new medium at that time; he was a pioneer. This is the history and important beginnings of a president to pass on preserve. Plaintiff asserts if the vested political interest did not own it they would wield the force of the city to remove it. Or as in Conway's letter (App.p.76) abscond with it knowing the potential.

From Pg. 23

The Iowa "hear say" provisions are vaguely understood by this pro se appeal but Plaintiff will mention that on December

20, 1985 and with two witnesses Judge Briles called the Plaintiff a "deadbeat".

From Pg. 24

A presidentially connected landmark building will not go unnoticed in Washington and the local power contingent know this. Time Magazine, November 23, 1987 spoke very realistically of the benefits of historic preservation all across this country.

From Pg. 39

It was not until late February, when Flynn withdrew of record from the case, that Plaintiff was served with a sherriff's sale of the Vale property to cure that default

From Pg. 39

This action was undertook against the Plaintiff on the eve of trial against the city of Davenport by the Asst. Scott County attorney Mr. Oddison. This abuse of process was a direct slap in the face to the rights of the Plaintiff to fairly seek his claims of damage. Three Lakes Association v Whiting 255 NW2d 686.

From Pg. 42

The public relations value to an established and redeveloped hotel connected to a President in office are substantial. The opportunity of that quotient of damage determination is valid yet Mr. Reagan leaves office in 1989. Plaintiff bears the burden of that loss of attached revenues.

From Pg. 43

President Grant was also a guest at this hotel, but the fact remains that a president in office would enact substantially more national and international coverage and positive public relations value to the hotel insuring great notoriety favorably affecting the revenues recouped. The city of Davenport Iowa effectively absconded with that possibility by their illegal actions. Hancock Supra.

From Pg. 49

The City's actions have substantially deprived him of the use and enjoyment of his property and constitutes a taking of his property without due process of the law. These actions constituted "inverse Condemnations." Osborn v City of Cedar Rapids, 324 NW2d 471, 474 (Iowa 1982)

State v Osborn, 154 NW 294, 171 Iowa 678, 692 (Iowa 1915); and Dawson v McKinnon, 285 NW2d 258, 226 Iowa 756, 770 (1939). See also Horton v Gulledge 277 NC 353, 177 SE2d 885, 890-891, 43 ALR 3d 905 (1970).

In the Supreme Court of Iowa

(Filed On or About January 20, 1989)

Glen O. Hancock)	Defendants Resistance
Plaintiff v City)	to Application for
of Davenport)	Further Review
et al.)	
)	Supreme Court#87-1022
)	Scott County #70078

Appeal from the District of Scott County

Honorable J.L. Burns, Judge

From Pg. 4

Giving all benefit to Hancock's argument it might be instructive to determine if the Court independently reviewed the publicity. Regardless of whether or not this is actually required of the Appellate Court under rule 167, the Court of Appeals clearly made its own analysis of the denial of a change of venue and found no

basis to determine that the trial court had abused its discretion

From Pg. 8

Even assuming misconduct of counsel perhaps the jury <u>after</u> hearing the evidence determined that $17,235.00 should not be considered a victory by definition, this is not prejudice; the jury made up its mind after hearing the evidence. This quote, however, makes it very clear a different result would not have been probable. The jury believed his rights were violated, but that renovation was not feasable.

From Pg. 10

There has been showing that sufficient grounds exist under Rule 402 (c) IRAP which requires further review by this court. As a practical matter, final action

by this court mearly puts the parties back to where they were in 1984. The Vale is still there. No matter what action either party takes next, Hancock, regardless of his belief, will have the benefits of procedural protections as previously held by this court. John Martin - Corporation Council.

The Iowa District Court Scott County

(Filed September 3, 1986)

Glen O Hancock) Law X no.70078

v City of Davenport) Equity

et.al.) Probate

) Filed by Plaintiff

Trial Certificate

1) The above party believes the issues are joined and states that such party is (a) is ready for trial, or (b) will be ready for trial by February 1, 1987

2) Discovery has been completed except as follows: Depositions of the individual defendants 3, 4, 5, [deleted]

_____

John Flynn

In the Supreme Court of Iowa

(Filed June 1, 1988)

Glen O Hancock) Appellee's Brief
Plaintiff v) Supreme Court #87-1022
City) And Arguement
of Davenport,)
et.al.) Scott County No. 70078

Appeal from the District of Scott County

Honorable J.L. Burns, Judge

From Pg. 23

Hancock raises the issues of temporary taking (Appellant's Brief p. 25) and inverse condemnation (Amendment To Appellant's Brief p. 44) specifically for the first time on appeal.

GLEN O. HANCOCK

P.O. BOX 1106

DAVENPORT, IOWA 52805

319-323-1208

Tom Riley Law Firm August 11,1987

Mark E. Liabo

P.O. Box 998

Cedar Rapids, Iowa 54206-0998

Dear Mr. Liabo:

Thank you for the letter of August 5, 1987, and the Notice of Appeal, there were other filings sent to you that day

concerning representations of the Civil Rights of Glen O. Hancock, denial of your second bill, (we have never received a bill from you, and from your presentation no bill for services would ever be presented), the lien placed on our assets and other matters. Please confirm that you received the other filings in Case 70078 including, but not limited to the continuance.

From Pg. 93

You became aware of our problems in the first meeting. The City and other lawyers served an illegal notice of sale of the Case 70078 and the Vale property in late February, 1987. As you agreed, they were operating illegally concerning procedure trying to stop the suit from going to trial. Your advice cost the Hancock Family

close to $20,000.00, and exhausted all monies.

From Pg. 93

We have requested on numerous occasions that you return our complete file C O D at the following address:

From Pg. 94

Again, why did we not enter the ordinance(s) involved including, but not limited to the following:

> City Legal ordinance states: "...the city attorney must keep records." This case would never have gone to trial if we had the records we requested.

These records (Housing and Fire reports) were never submitted to us for persual. The City Attorney was hiding the evidence.

Mr. Liabo, you to were hiding the evidence to protect the attorneys. Entering the evidence as requested would have proven that the City could not demolish the building. The City Attorney stopped our progress early in the case for benefit of the lawyers!

From Pg. 95

We requested per Judge Kelly's instruction that the Housing and Fire Code ordinances for a VACANT building be entered into this trial. In addition, we requested: 1) Recommended Provisions and Commentary for Existing High-rise Buildings, and the uniform code for building conservation be entered in this case. These buildings codes are part of the International Conference of Building

Officials and are part of the Davenport Ordinance.

From Pg. 96

Speak to me concerning the Real Estate Appraisals. There, as explained to you, were never any appraisals completed. Mr. Liabo only looked at the January 1984 preliminary consultation. We agree there was no viable use at that time under those assumptions. However, the value next preliminary consultation by the same appraiser showed a value of $500,000.00. Remember, this was only a working tool for us. Also, Mr. Fisher stated under oath that the development package could never be completed. We told you this in February 1987. As stated in your hearsay letter (contents are denied by me) of April 2,

1987, the assumptions on a project can make or break a development. Please identify any development in the Central

From Pg.97

Business District that has four to five times the total square footage of floor space for parking. There are only 29 developed blocks in the Central Business District of Davenport. We challenge your interpretation of Mr. Fisher's comments.

From Pg. 97

The fact is, Mr. Liabo, we were at all times cooperating with you. You or your firm discussed our case 70078 with Mr. John Flynn before and after your entrance. In reality, you allowed the City to close discovery on or about the time you entered with no objection. You stated, and we quote "This a young case and will not go

to trial in the near future".

From Pg. 97

The City Housing Inspector that you would not depose or call to trial as requested was quoted as saying "We (the City) are going to condemn all of your property" on or about February 1, 1984. The refinanced money was not identified with Industrial Development Bonds.

From Pg. 98

As a professional, please state the requirements for a professional development of Real Estate, specifically the Vale Apartments. The first and foremost is legally the City.

From Pg. 99

You did not allow any evidence concerning the money damage that we have incurred to be introduced at trial. We asked on more than one occasion to amend the petition that John Flynn filed to include money damage. You never did so. You had no authority to drop part of the suit against the City, but you dropped the money parts that we may have prevailed on.

The Iowa District Court Scott County

(Filed May 1, 1987)

Glen O Hancock) Motion for #70078
v City of Davenport) Change of Venue
et.al.)
)

1 and 2 [deleted]

3) Virtually every city counsel meeting in which the Vale Apartments was discussed were reported in the papers or on television. Plaintiff will submit with his is brief and support of this motion copies of dozens of newspaper clippings dealing with the controversy surrounding the Vale.

4, 5, 6, 7, 8 [deleted]

_____

Mark Liabo

Attorney for Plaintiff

MailGram of Public Record Western Union

7149953775TDRN Anaheim, CA 271 06-08-87

0658PEST

Mrs. Nancy Reagan

c/o Mr. Jack Cortamache

The White House

Washington D.C. 20005

From John Hancock

2704 West Ball Rd. Apt. 6-F

Anaheim, CA 92804

Mail Gram of Public Record Western Union

4-0219088303002 10-30-87ICSIIPMRNCZ

CSPSNAB

17149953775MGMTDRN Anaheim, CA 10-30-87

0155PEST

Attorney General Edwin Meese

c/o Justice Dept.

Washington D.C. 20530

From John Hancock

EDITOR'S NOTE:

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Letter from Lee president

EDITOR'S NOTE: The following is a copy of a letter from Lloyd Schermer, president of Lee Enterprises, to Davenport aldermen John Caffrey, Karl Rhomberg, Florian Keen, Tim Sodawasser, Don McGee and Don Costello:

When I assumed the responsibility to be chairman of the fund-raising drive for the Adler Theatre, I had several objectives in mind:

1. The Quad-Cities' No. 1 priority is jobs. Cultural and educational facilities are very important to firms seeking new plant locations.

2. To put together a project that would be truly Quad-Cities in scope.

3. To stimulate cooperative leadership between the public and private sectors of the Quad-Cities hoping this would be the first of many projects to improved the quality of life for our communities and to help attract businesses that will give our citizens a meaningful employment.

4. To set a example of what we can to to promote growth in the Quad-Cities rather than watch them continue to disintegrate.

The City Council took a giant step forward when it built the RiverCenter. That facility is being used far beyond its expectations by thousands of people from in and around the Quad-Cities.

The Davenport Bank & Trust Co. has made a major contribution when it remodeled the Blackhawk Hotel. Before the hotel was renovated, Lee Enterprises had serious studies underway to move its corporate headquarters to another city because of inadequate hotel and meeting room space. We could have located our headquarters in any one of 50 communities and quality of life was an important consideration.

Communities grow because there is leadership that helps them grow and this must include a cooperative effort between the public and private sectors. Take a look at Cedar Rapids or Des Moines for example. Davenport has not just stood still; it is going backward.

International Harvester, JI Case and Caterpillar are gone. I have a hunch Deere & Co was seriously wounded in this last strike, too. If the parade of jobs marching out of our community continues, you're not going to have enough money in your budget to fill the potholes in our streets, much lessprovide other vital community services.

I don't see much hope for this community with the kind of leadership you have displayed.

We have a fine leader in Mayor Thomas Hart. It's a pity you don't give him the support he needs.

Lloyd G. Schermer
Lee Enterprises

D'Autremont predicts favorable council reaction

The Davenport City Council is likely to react positively to the development plans that were announced this morning, Alderman Larry d'Autremont, D-at-large, said.

D'Autremont

D'Autremont, chairman of the city's community development committee, said he's excited about the project because it could lead to even more downtown development.

"I can't speak on the council's behalf, but I think they will react positively," he said.

He said the proposal for a parking ramp is different than the plan that the council defeated in February because the *Times* location would allow a new ramp to serve the whole downtown as well as the River Center and the Adler Theatre.

Alderman Jim Hancock, D-2nd Ward, also was enthusiastic about the project. The parking ramp would serve the 6,000 employees who work downtown during the day, and also provide parking for special events, he said.

It also will help get parking off the levee, which will improve LeClaire Park, he said.

Several other council members and council members-elect also said they think the plans will do much to encourage downtown development.

Mayor Thom Hart said the council members he has talked to favor the plans, and said he thinks they will approve the agreement.

City Administrator Bruce Remer said the parking ramp the city would build probably would have at least 500 spaces. The nearby ramp at Perry and 2nd streets has 341 spaces.

Lee again demonstrates commitment

Officials with the *Quad-City Times* and Lee Enterprises say the expected agreement between the city, Rejuvenate Davenport and the *Times* is an important step in downtown development.

"This agreement solves a problem for the city by helping to enhance the eastern gateway to the downtown and by providing the city with free land to build that much-needed parking to serve the Super Block," said Richard Gottlieb, president and chief operating officer of Lee.

"It is but another indication of Lee's commitment to the downtown," he said.

Both the *Times* and Lee have a history of working for downtown development.

Lloyd Schelmar, Lee's chairman of the board and chief executive officer, received the Iowa Arts Council's "Outstanding Achievement in the Arts Award" in 1986 for his role in raising $4.25 million to renovate the Adler Theatre. He was general chairman of that fund drive.

In addition, Lee contributed $300,000 to that effort, and its board of directors created and funded a $1 million Adler Theatre Foundation to support programming. The theater was renamed in honor of E.P. Adler and his son, Philip, longtime publishers of the Times. Philip Adler also later became president of Lee.

Ron Rickman, former *Quad-City Times* publisher and now Lee vice president for newspapers, played a key role in the development of the downtown Super Block, which includes the Adler Theatre, River Center and the Blackhawk Hotel.

In an effort to make sure that Bishop's cafeteria will continue operating downtown, Lee has been charging the cafeteria only $1 a year to lease its facility at Brady and 2nd streets.

Gottlieb also praised Rejuvenate Davenport for its role in putting the expected deal together.

"They are doers. We need more like them and they need the community's support," he said.

He also expressed appreciation to Mayor Thom Hart and city officials for their positive attitudes in the discussions to date.

John C. Gardner, publisher
Daniel K. Hayes, editor
William K. Johnston, general manager
Daniel J. Foley, editorial page editor

Juror: Vale owner didn't win victory

I was a member of the jury that heard the case of the City vs. Glen Hancock, owner of the Vale Apartments, and felt I had to write this letter to let the public know that our decision was not a victory for Mr. Hancock as was reported by the news media.

How could the awarding of such a small sum of money be a victory? I can assure you that none of the jury members felt it was a victory for him or we never would have come to that conclusion. The city had a good defense but we felt that since Mr. Hancock's constitutional rights were violated, he should be awarded just a small portion of his attorney fees and only that.

Each of the jury members also felt that is was not feasible to renovate the Vale but we were not asked to make a decision on that issue; if we were, we would have voted to have it demolished.

Marie Kopatich
Foreman, Scott County jury
City vs. Glen Hancock

The White House

Washington

September 9, 1983

Dear Mr. Kell;

Thank you for sending the Argus article on the Vale Apartment building. It did recall many happy memories. However, it is always sad to see a fine old building deteriorate. Perhaps that is why happy memories are so important -- they never get shabby and run down! It is very kind of you to share this article with me.

With best wishes,

Sincerely,

Ronald Reagan

Mr. Ellis E. Kell, Jr.

Rock Island Argus

P.O. Box 6

Rock Island, Illinois 61201

Bill Wundram

No sweet sorrow

I rejoice that the old Vale Apartments, the ugly gray elephant in downtown Davenport, must go down. That judge who ruled is smart. He must have been getting thumpin' waves from Hugh Downs, the eminent one. Hugh didn't think much of the place, either. (For what that's worth)

A couple years ago Hugh was visiting Davenport for a "20/20" segment, and Chamber's Oliver Gillespie hosted him for bubbly and cheese.

Hugh Downs

Hugh, an architecture buff, was staying at the Blackhawk Hotel and asked "What is that incredible junk (the Vale) that I see out my hotel window?" Why is it allowed to stand in your pretty city?" What really threw Hugh was the zig-zaggy roof that looks like something from a carnival crazy house. When told that the top once burned off, and what was left was allowed to stand, Downs shrugged. "Thank goodness I thought you just had drunken bricklayers in Davenport."

PERSONALLY, before they tear the old place down, I want to go roller skating in those whoopsy daisy rolling corridors, with their wavy slopes that warped when the building was soaked from top to bottom during its big fire.

John C. Gardner, publisher
Daniel K. Hayes, editor
William K. Johnston, general manager
Daniel J. Foley, editorial page editor

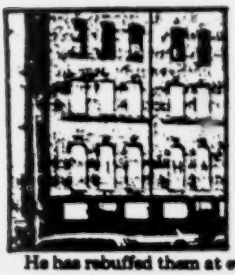
Quad-City Times
Serving the entire Quad-City area

COMMUNITY AGENDA '87

- ☑1. Develop a Quad-City strategy.
- ☑2. Create more Quad-City jobs.
- ☑3. Encourage 'can-do' leadership.
- ☑4. Overcome our 'image' problem.
- ☑5. Fund our vital institutions.

Editorial

What next for Vale?



If downtown Davenport had a Top 20 list of eyesores, the boarded-up Vale Apartments would be No. 1.

City officials have been trying for five years — ever since the building's heating system broke down and 85 tenants were moved out in 1982 — to get owner Glen Hancock to fix it up or tear it down.

He has rebuffed them at every turn.

Hancock has repeatedly said he has plans to renovate the 110-year-old structure where Reagan once slept. He has repeatedly failed to produce any. The city has repeatedly tried to force him to do something — through negotiation, through council action, through the courts. And it has repeatedly been unsuccessful.

A few months back, the Iowa Supreme Court ruled that the City Council failed to follow its own ordinance when it ordered the building demolished.

The court said the city did not give Hancock a list of specific problems he would have to correct in order to prevent demolition. To anyone who followed the city's lengthy efforts, however, it was almost laughable to suggest that the owner wasn't made aware of the city's specific concerns.

Nevertheless, demolition is off for now and Hancock is in court suing the city for damages he says he suffered in the legal fight.

All of that might persuade city officials to give up on doing anything about the Vale.

They shouldn't.

What they should do is give Hancock one more chance — frustrating as that might be — to come up with a renovation plan. And it should be a good faith effort on the city's part. If the guy would put the money he's spent on lawyer fees into a remodeling plan, perhaps he could save the building.

But if Hancock doesn't produce a plan within some reasonable time, say three to six months, the city ought to start over again on demolition proceedings — making sure this time that it follows the law to the letter.

The Vale has been No. 1 long enough.

Quad-City Times

An independent newspaper

John C. Gardner
publisher

Forrest Kumer
editor

Dan Hayes
executive editor

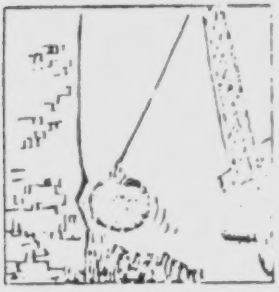
William Wundram
associate editor

Bob Nuccio
editorial page editor

Daniel J. Foley
managing editor

We say...

An overdue decision



The Vale Apartments in Davenport — once an elegant hotel and now a condemnable eyesore — have hung too long between fix-up and tear-down. The five-story, 111-year-old building at 210 E. 4th St. is now a legal step away from being razed, which wouldn't be a bad thing for a community trying to service its downtown Super Block development.

The city of Davenport is right to press for a decision on the building that was ordered closed in 1982 because of code shortcomings. Owner Glen Hancock has been delaying a wrecking-ball execution while offering nothing but a faint hope of renovating the building. However, the only solid thing on the table is a court rejection of Hancock's request for a permanent injunction to keep the city and demolition away from the Vale door. Time is running out.

This push-and-shove toward demolition comes with a heavy heart — and understandably so. When that building was known as the Kimball House, its visitors included Ulysses S. Grant, Al Jolson, Ralph Waldo Emerson and Sarah Bernhardt. President Reagan later lived in the building. That is strong history — but not enough to hold up walls of such a deteriorating structure.

So, as the city has been saying, fix it up or tear it down. Surely, the property can serve the community in better ways than a boarded eyesore.

Vale issue to a head

Who can blame the Davenport City Council for pressing the owner of Vale Apartments, Glenn Hancock, for a $200,000 bond to ensure the deteriorating and vacant building on East 4th Street will either be renovated or torn down? The owner simply has run out of time for this overdue decision. And the city understandably ran out of patience as reflected by a 9-1 vote requiring the bond by March 22 that could stay the demolition by one year.

A sensible deferral agreement had been worked up to serve both the city and Hancock, but the owner's call for a time extension to raise the bond threatened to knock everything off track. So by March 22, the city should know whether the owner intends to fix up the property or have it torn down.

The city was right to bring this issue to a head — and clearly reasonable in setting the bond requirement next month. The ball is in the owner's court — and he knows this time around that it can be a wrecking ball.

2-17 84

Vale demolition is OK with judge

By Bill Theobald
QUAD-CITY TIMES

The city of Davenport is free to tear down the Vale Apartment building because an Iowa Supreme Court justice has dismissed a request by the owner to block demolition.

But the wrecking crew won't be out today.

Building owner Glen Hancock had requested that the court block demolition pending his appeal of the entire issue. Although his request was rejected, he still can go forward with his appeal.

If he would win that appeal and the city had torn down the building in the meantime, the city might have to pay damages.

The decision, dated Friday, from Supreme Court Justice Mark McCormick comes on Hancock's appeal of a Scott County District judge's ruling that said the city could proceed with plans to demolish the 111-year-old downtown landmark at 210 E. 4th St.

The building has been cited numerous times for housing and fire code violations and the dispute between the city and Hancock has been going on for about six years. Hancock claims the city does not have the authority to tear down the building and has announced plans to restore it into a 19th century-style country inn.

The judge's ruling states that the "court is concerned about the evidence that the building constitutes a hazard to the public safety" and denies Hancock's request for an order blocking demolition until the appeal is decided. A decision on the appeal may take from six to 12 months.

Michael Meloy, with the city's legal staff, said the city could proceed with demolition, but if Hancock won his appeal the city might have to pay damages. On the other hand, if the city doesn't tear down the building and it catches on fire and damages surrounding property, the city might also be liable, Meloy said.

The city received a $174,000 bid last year for the demolition and the contractor has agreed to honor that bid despite the long delay, Meloy said.

Davenport Mayor Charles Peart said he expects the issue will be discussed by the City Council before a decision is made on how to proceed.

Mid-80s Thursday

Tonight will be partly cloudy with lows in the upper 60s. Thursday will be partly cloudy with highs in the mid-80s.

— PAGE 2

Weatherline: 326-5171

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Quad-City Times
An independent newspaper

John C. Gardner
publisher

Daniel K. Hayes
editor

Bob Nangle
editorial page editor

Daniel J. Foley, managing editor/morning edition
Rusty Cunningham, managing editor/afternoon edition
Deborah Brasier, managing editor/features

EDITORIALS

Same Vale mission

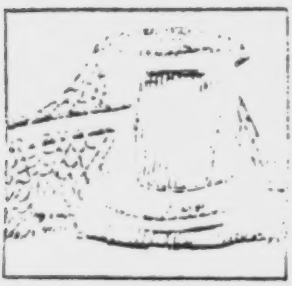
The Iowa Supreme Court was unanimous in telling the city of Davenport that it didn't go about the planned demolishment of the Vale Apartments, 210 E. 4th St., the right way. So be it. No use contesting such lopsided legal rebuttal. The city's resolve now should be to try again to get a commitment on the property's restoration or push demolishment the right way.

The city's clear task is to either have Vale owner Glen Hancock fix up this downtown eyesore or take the proper steps to get it removed. This setback to square one is regrettable, but if the city can live with that building for 112 years, it can manage still another.

The Vale, empty since 1982, has a listing in the National Register of Historic Places going for it, but that is about all. Its heyday of providing a roof for such celebrities as Sarah Bernhardt and Al Jolson, even Presdient Reagan, is past. Its brick and wood frame has held up a past — but what future for a building more than a century old? Renovation plans have never materialized.

If the city has failed to pay legal respect to its own laws and due process as the court contends, then make the necessary corrections and continue to force action on the Vale. A legal decision does nothing to strengthen the aging materials that hold this building together. It's still a matter of fix or nix.

Only court action?



Since the city of Davenport has done quite well during the first 111 years of the Vale Apartments at 210 E. 4th St., it shouldn't have any trouble getting along for another year even though the eyesore structure appears late for a renovation or razing.

Building owner Glen Hancock doesn't want to give up on the property that is listed in the National Register of Historic Places and once provided a roof over the head of such celebrities as Sarah Bernhardt and Al Jolson. Indeed, it's tough to let go. But the building is no good as it now stands, complete with Hancock's window graffiti, "I have just begun to fight."

That fight, an attempt to keep the city from clobbering the building with a wrecking ball, now goes to the Iowa Supreme Court. The court apparently will have the final say regarding the safety and disposition of the building. And legal wheels aren't very zippy.

It's too bad Davenport has to go this route when Hancock has had ample opportunity to serve the situation by presenting renovation plans and money. The court test regrettably will take time. That doesn't help a community stuck with an ugly downtown landmark. Nor does it necessarily help Hancock or a building that already has had more time than its old brick-wood frame can obviously take.

AUG 1 1985 TIMES

Appraiser: Vale is worthless

Says renovation can't be justified

By Karl Oxnevad
QUAD-CITY TIMES

A real estate appraiser hired in 1984 by Vale Apartments owner Glen Hancock testified Tuesday that the 114-year-old building is worthless.

J.T. Willits, of Davenport, testified as a witness for the city of Davenport, the defendant in Hancock's damages suit against the city.

Willits said he told Hancock in 1984 that he could not make enough money from the completed renovation of the building to justify either of Hancock's $3 million or $1.8 million proposals for restoring the building, 210 E. 4th St..

"It was my opinion then and now that the building renovation could not produce enough income to support the renovation," Willits said.

"So the value of the building was zero?" asked John Stonebraker, attorney for the city.

"Zero, yes sir," Willits replied.

Willits said only the lot the building stands on has any value. He did not estimate a value on the lot.

Hancock is suing the city for unspecified damages, saying the city's efforts to tear down the building has caused potential investors to back away from his multi-million dollar plans to turn the building into a downtown hotel.

CHRONOLOGICAL LIST OF QUAD CITY TIMES NEWSPAPER ARTICLES (INCOMPLETE)

September 4, 1977 Business (Picture)

December 1977 Loans Top Grant Spending

March 19, 1987 Here Comes an Auto Comeback Trail for Faded Vale

February 15, 1981 Reagan Days (Picture)

September 2, 1983 Building May be Leveled

November 11, 1983 Vale Owner Warned: Fix it or it Falls

February 10, 1984 Vale Owner May Get Another Year to Fix it.

January 17, 1984 Vale Owner Gets 30 Days to Decide

January 13, 1984 Council Decides: Will Vale Fall

Febru`ry 15, 1984 (Editorial) Agreement n Vale

February 16, 1984 Council on Vale: Time t Put up or Shut Down

February 17, 1984 (Editorial) Vale Issue to a Head

March 20, 1984 Face Lift for Vale Building?

March 19, 1984 New plan for Vale:Turn it into an Inn

March 22, 1984 No Talk on Vale:Both Sides Proceed

April 13 1984 (Official Notice) Bid to Demolish

March 25, 1989 Vale Owner Sues to Stop Demolition

May 12, 1984 Vale Obtains Lease of Life

May 17, 1984 Vale Ducks Demolition

August 30, 1984 Wrecking Ball Swings Toward Vale

September 5, 1984 Another showdown for Vale

September 6, 1984 Council:Raze Vale

September 8, 1984 Vale on Hold Again

January 8, 1985 Inspectors get look in Vale

January 12, 1985 (Soundoff) The Ghost

January 10, 1985 Tour of Vale Draws Crowd

January 10, 1985 Showdown at Vale

January 16, 1985 Boarded up But Not Down

January 17, 1985 Hot Battle Ignites in Court

January 18, 1985 Vale Owner: Nearly Set to Renovate

January 23, 1985 Vale is Full of Holes, City Says

March 5, 1985 Vale Owner Sues Again

May 18, 1985 No Room at Inn (Picture)

July 1, 1985 Will Vale Prevail?

July 1, 1985 Last Chapter Still Not Written to Tale of Vale

January 11, 1985 Replace Vale with Parking Lot

July 17, 1985 Judge: Vale Must Go

July 18, 1985 Vale Owner Vows Appeal

July 19, 1985 (Editorial) An Overdue Decision

July 22, 1985 (Editorial) No Sweet Sorrow

July 30, 1985 Vale Demolition Delayed Again

August 1, 1985 (Editorial) Only Court Action

July 30, 1985 Appeal Puts Vale on Hold

September 17, 1985 Vale Owners Demolition Fight Goes All The Way To The Top

September 4, 1985 Vale Demolition is OK With Judge

August 3, 1985 Save Vale for History (Soundoff)

August 3, 1985 Vale Remains in Limbo

September 17,1985 Vale Owner Fires Off New Appeal

October 4, 1985 Vale Gets Reprieve From Court

October 3, 1985 Vale Gets Reprieve

October 22, 1985 Vale Owner Files High Court Motion

October 23, 1985 That Says It All (Picture "I Have Just Begun to Fight!")

November 8, 1985 Vale Owner Must Pay Or Else

November 24, 1986 Bill Wundrum

December 19, 1986 Council Lacks Leadership

December 21, 1986 High Court Backs Recent Vale Order

June 16, 1987 City Worker: We Wanted Vale Fixed Up

June 21, 1987 Reagan Slept Here (Picture)

June 25, 1987 Man of steel Clears Bix & Finish Area (Picture)

June 16, 1987 Testimony: City Didn't have Secret Plan for Vale

June 31, 1987 Vale Deed Changes Hands

June 26, 1987 Vale Owner Suit Nets Only $17,000

June 9, 1987 Davenport v Vale

June 1987 Appraiser: Vale is Worthless

August 25, 1986 Same Vale Mission

August 20, 1986 Back to Square One In Fight Over The Vale

July 31, 1987 Cheers and Jeers

December 28, 1987 Bright Idea In Vale of Gloom

January 12, 1987 What Next For Vale

October 1, 1987 Is The Vale Worth Jail

September 2 1987 Davenport Will Pay $48,000 for Lawyer

Brubaker, Flynn & Darland, P.C.
Attorneys at Law
630 Union Arcade Building
Brady Sreet
Davenport, Iowa 52801
Telephone (319) 322-2661

April 4, 1986

Mr. John A. Hellstrom
Attorney at Law
811 Kahl Building
Davenport, IA 52801

Re: 221 E. 7th Street, Davenport, Iowa

Dear John:

I spoke with you on April 3, 1986 about a problem that has developed resulting from a judgement which you took against Jane T. Hancock on March 24, 1986 for the property upon which first Federal Savings & Loan Association has a mortgage at 411

E. 13th Street, Davenport, Iowa.

Prior to this judgement being entered, Jane T. Hancock had entered into an Offer to Purchase with Terry McDonald wherein Terry McDonald agreed to purchase the property located at 221 E. 7th Street, Davenport, Iowa for the sum of 2,200.00. A copy of this Offer to Purchase is enclosed with this letter. Unfortunately Mr. McDonald paid the entire $2,200.00. to Mr. Glen Hancock upon the execution of the Offer. Mr. McDonald was waiting to have the abstract brought up to date and have his attorney exam it prior to closing. The abstract was continued through March 10, 1986 and we were in the process of obtaining a deed from Mrs. Hancock when your judgement in favor of First Federal went on record on March 24, 1986.

Mr. McDonald was buying this property subject to an accumulation of back taxes

in excess of $1,000.00 and in an "as is" condition. The property needs renovation in order to meed City Housing Code Standards.

Mr. Dennis Jasper represents Terry McDonald in this purchase and he is preparing an affidavit to be signed by Mr. McDonald indicating the sequence of events in this transaction.

From Pg. 80

I would request that upon receipt of Mr. McDonald

s affidavit verifying the facts in this letter, that First Federal release the judgement lien contained in the foreclosure action against 411 E. 13th Street, Davenport, Iowa, as it pertains to the property being sold to Mr. McDonald. I realize that First Federal may well refuse to release this lien and there is very little that can be done to force them

to do so. However, the only person who would be hurt by this situation would be Mr. McDonald, who is an innocent third party to the disputes between First Federal and the Hancock family.

As I mentioned to you previously, I will no longer be representing Glen Hancock, but because this matter was left hanging, I feel a moral obligation to Dennis Jasper and Mr. McDonald to do what I can to resolve this problem.

I appreciate your consideration.

Very truly yours, John T. Flynn

Trial Transcript Testimony

of Bob Oakes (of the trust Dept. Davenport Bank and Trust Co.) Case 70078 [Tr.Trans.]

From Pg. 61

BY MR. NORMAN:

Q. Mr. Oakes, does your bank belong to the downtown Davenport Development Corporation?

A. Yes, I know it does.

Q. Does your bank own or manage other property in downtown Davenport besides the Vale property which you once managed?

A. We have some property in downtown Davenport, yes.

Q. Are you acquainted with James Conway, one of

From Pg. 62 [tr. trans.]

the defendants in this action?

A. Yes.

Q. Have you ever had occasions to visit with Mr. Conway about the

prospective uses of downtown real estate that your bank would have an interest in?

A. Yes, we have had several conversations.

Q. Referring to the summer of 1983, do you recall talking to Mr. Conway about the possible uses of the Vale Apartment Building in case the bank, for some reason, had to --

A. Yes.

Q. --take possession? I would like to show you a copy of a letter addressed to you and ask you if you recall seeing that before?

A. Yes.

Q. And the letter has three attachments to it which purport to be diagrams of downtown real estate in the area of the Vale. Do you recall seeing those before also?

A. Yes, I have them in my file.

MR. NORMAN: I would like to offer as Defendant Conway's Exhibit--I don't have any number--Defendant Conway's Exhibit--

MR. STONEBRAKER: I don't think we have reached --perhaps we will call it Exhibit 101. I

From Pg. 63 [tr.trans.]

I believe, counsel, you have seen a copy of this.

MR. LIABO: No objection.

MR. STONEBRAKER: No objection.

MR. NORMAN: We would like to introduce this into evidence. I will leave it here with you Mr. Oakes.

THE COURT: Excuse me, sir, there was no objection to the instruction? Okay. 101 will come in.

MR. NORMAN: Thank you, your Honor.

Q. Mr. Oakes, the letter from Mr. Conway indicates that you had had a

telephone or personal visit previously and he wrote you this letter subsequent to that conversation or visit and enclosed those documents, one of which was a sketch of the Vale property showing it as a parking lot with seventy-three parking places, I believe, and that particular sketch was dated September 7, 1983, which was one week before the date of the letter itself to you; is that correct?

A. I believe, yes, that was --

Q. And that you do recall receiving that letter and those exhibits from Mr. Conway?

A. Yes.

Q. And at that particular time, do you recall was the payments on the Vale building--were they in default or in arrears at that time--do you recall at

From Pg. 64 [tr.trans]

that time?

A. In September of 1983, yes.

Q. So the purpose of your conversation with Mr. Conway was presumably to analyze possible moves in the event the bank should become the sole possessor of the property?

A. Possibly, yes.

MR. NORMAN: I don't have any further questions.

From Pg. 66 [tr.trans]

By Mr. Liabo

Q. Mr Oaks, you did consider utilizing the Vale.

From pg. 67 [Tr. Trans.]

or the property in which the Vale sits as a parking lot, did you not?

A. Among other uses, yes.

Q. And the diagram that's attached to Mr. Conway's letter to you of September 7, 1983, was drawn up as a plan for the Vale as a parking lot, correct?

A. It's drawn, yes, it is.

Q. Was that drawing made by Mr. Conway or somebody in the City, as far as you know?

A. I don't know who made the drawing up.

Q. Did you ever make a statement to Sandy Vale, one of the heirs, that the Vale estate would own a parking ramp on the Vale location?

A. I don't understand the question.

Q. Did you ever make a statement to Sandy Vale, one of the heirs of the Vale estate, that the Vale estate would own a parking ramp on the site of the Vale Apartments?

A. No.

Q. You deny that?

A. Yes.

Q. Do you know if Mr. Figge--John Figge is president of Davenport Bank--made

a statement at a fund raising group in the middle of 1983, that the Vale would be torn down for parking for the Adler Theatre?

From Pg. 68 [Tr. Trans.] 70078

A. I did not know that.

Q. You don't know that.

A. Yes, I did not know that.

Q. Is the Davenport Bank--or does the Davenport Bank have any financial interest in the Blackhawk Hotel?

A. Yes.

Q. What is the nature of its financial interest?

A. That's a very technical question which I can't answer.

Q. Does it hold a mortgage on the Blackhawk?

A. I don't know.

Q. Do you know if the directors of the Davenport Bank

had signed notes wherein they are personally obligated for the debts of the Blackhawk Hotel?

A. I don't know that.

MR. STONEBRAKER: Excuse me, your Honor, we are getting into questions that assume great numbers of facts that are not in evidence and the cross-examination is improper for that reason.

THE COURT: Would you approach the bench a minute, please.

From Pg. 69 [tr.trans]

(an off-the-record discussion was held.)

BY MR LIABO:

Q. Do you know of any plan by the City to--or whether the City had any plan to acquire title to the Vale?

A. No.

Q. They never discussed such a thing,

MR. STONEBRAKER: Objection

A. I'm handing you what has been marked as Plaintiff's Exhibit 70. Can you identify that as a letter from James Conway, the president of the Downtown Development Corporation, to you dated January 10, 1984?

A. Yes, I recognize it.

Q. Did you receive this document?

A. Yes, uh-huh.

MR. LIABO: I would offer Plaintiff's Exhibit No. 70.

MR. STONEBRAKER: No objection.

MR. NORMAN: No objection.

THE COURT: 70 will come in.

BY MR LIABO:

Q. Isn't it true, Mr. Oakes, that Mr. Conway in that letter discusses ways in which a private person might acquire title to property through the actions of the City?

From Pg. 70 [tr.trans]

A. May I read that again? Would you restate your question please?

Q. Mr. Conway states in this letter, does he not, quote "At the same time Iowa Urban Renewal Law is the only means available to the City to take such action on the behalf of a private developer." Isn't it true Mr. Conway is advising you of ways the City can act to acquire title to property on the behalf of a private developer?

A. He is attempting to advise us, yes.

MR. LIABO: No further questions, your Honor.

Seventh Judicial District

(Filed June 23, 1987)

Name List for Case No. 99-70078 Glen Hancock v City of Davenport

Alt. Jurors-0 Challenges-6 Strikes-8

1 8723015 Loete, Andrew Louis [Davenport]

2 8723002 Michalowski, Helen Mary [Davenport]

3 8723009 Vubiel, Maxine [Bettindorf]

4 8723041 Kopatich, Marie Patricia [Davenport]

5 8723008 Huelsenbeck, Margaret Ann [Davenport]

6 8723072 Axpell, Marilyn [Bettindorf]

7 8723029 Collins, James Harold Lee Jr. [Davenport]

8 8723001 Kulas, Elizabeth Ann [Bettindorf]

Dixon-Soviet exchange stirs controversy

By Elva Lago
QUAD-CITY TIMES

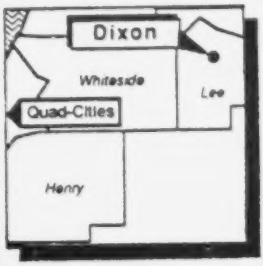
DIXON, Ill. — Three guests from the Russian city of Dickson, Siberia, will visit here next month, but not everyone is happy about it.

John Lightner, a Dixon car dealer, is against the visit because he believes it will be used to spread propaganda. "I have a copy of an FBI report that was made part of the Dec. 9, 1987, Congressional Record that concerns Soviet active measures in the U.S.," he said.

"The report says the Soviets are trying to alter world opinion of the United States by propaganda, that they plan on taking over our country without ever firing a shot."

Mayor James Dixon disagrees with Lightner. "I don't see what showing people what a great country we have can hurt anything," he said. "I have confidence in our system of government, our economic system and our people. I don't believe anyone can take over our country through propaganda."

Lightner said his belief in the report is strong enough that he has taken out advertisements in a local newspaper to let people know what's in it. "I just think people have the right to know about what this report says," he said. "My main goal is to let people know."



Dixon said he has received overwhelming support for the Russians' visit. He said the Voice of America radio network will cover the visit and broadcast the story worldwide.

"I think a survey would show that most of the people in town are in favor of the visit," he said. "I think the Russians will take a very good impression home. They'll find that people aren't dying in the streets, there's plenty to eat and Levi's are cheap."

Resident: Visit will bring back nightma

DIXON, Ill. — One Dixon resident says this summer's "friendship" visit to her city by a Soviet delegation will revive nightmarish memories for her.

Elisehetha Zieher remembers her father coming home after five years in a Russian prison camp at Dickson, Siberia, the same city now considered Dixon's sister city.

Dixon

"My father was a German soldier," she said. "But the war ended May 8, 1945, and the Russians arrested my father May 13. He wasn't a German soldier anymore, he was a stonemason again."

Zieher said it was 1948 before she and her family learned her father was still alive. "It was then we received a postcard," she said. "The Red Cross got in and were able to let us know he was still alive."

Mrs. Zieher's father was released from the prison camp only because he became ill. "We had to feed him baby food and s bring him back to regular she said.

Mrs. Zieher's husband also time as a prisoner in a R camp. "He had nightmares ab until the day he died in 1974 said. "That's how bad it was."

Mrs. Zieher said she d oppose the Russian visit be she believes everyone shou free to travel where they plea

"But I think they're up to thing, and I don't trust them said.

Mrs. Zieher said she pla meet with Mayor James Do express her views. "I've th about it for a long time," she

OOK MAY 15, 1988

On Sunday, Little Cousin roamed the zoo grounds for hours and then returned, evading traps set up for him.

Zoo Director Charles Wikenhauser said Little Cousin rarely leaves the zoo's 75 acres and, when he does, he only goes as far as some nearby woods.

Red tape delays Soviets

While Ronald Reagan and Mikhail Gorbachev hunker down at this month's summit in Moscow, the mayors of Dixon, Ill., and Dickson, Siberia, might be having a caucus of their own.

Thanks to a bureaucratic snag, the Dickson delegation from Siberia will delay its visit to the hometown of President Reagan until at least the end of May.

The Soviets had planned to arrive this week and the mayor of Dickson, Nikolai Kardamyshev, was to have thrown out the first pitch at Saturday's Sandy Koufax baseball league opener.

But Dixon Mayor James Dixon said the three-member delegation's trip was delayed because at least some of the Soviets did not apply for visas early enough. He said the process takes 30 days.

IV AMENDMENT US CONSTITUTION

The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

V AMENDMENT US CONSTITIUTION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor

shall be compelled *in any criminal case to be a witness against himself, nor be deprived of life; liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

VI AMENDMENT US CONSTITUTION

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and District wherein the crime shall have been committed, which District shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsery process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

VII AMENDMENT US CONSTITUTION

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

XIV AMENDMENT US CONSTITUTION

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the law.

EXECUTIVE ORDER 11593 TITLE 3-THE PRESIDENT EXECUTIVE ORDER 11593

Protection and Enhancement of the Cultural Environment

By virtue of the authority vested in me as President of the United States and in furtherance of the purposes and policies of the National Environmental Policy Act of 1969 (83 Stat. 852, 42 USC 4321 et. seq.), the National Historic Preservation Act of 1966 (80 Stat. 915 16 USC 470 et seq.), the Historic Sites Act of 1935 (49 Stat 555, 16 USC 461 et seq.), and the Antiquities Act of 1906 (34 Stat. 255, 16 USC 431 et seq.), in its order as follows:

SECTION 1. Policy. The Federal Government shall provide leadership in preserving, restoring and maintaining the historic and

cultural environment of the Nation. Agencies of the executive branch of the Government (hereinafter referred to as "Federal Agencies") shall (1) administer the cultural properties under their control in a spirit of stewardship and trusteeship for future generations, (2) initiate measures necessary to direct their policies, plans and programs in such a way that federally owned sites, structures, and objects of historical, architectural or archaeological significance are preserved, restored and maintained for the inspiration and benefit of the people, and (3), in consultation with the Advisory Council on Historic Preservation (16 USC 470i), institute procedures to assure that Federal plans and programs contribute to the

preservation and enhancement of non-federally owned sites, structures and objects of historical, architectural or archaeological significance.

TITLE 28 USC SEC. 1257 (2) (3)

(2) By appeal, where is drawn in question the validity of a statute of any state on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and the decision is in favor of its validity.

(3) By writ of certiorri, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up claimed under the Constitution, treaties or statute of,

or commission held or authority exercised under, the United States.

TITLE 28 USC Sec. 1442 (a) (a-2) Members of armed forces sued or prosecuted.

A civil or criminal prosecution in a court of a State of the United States against a member of the armed forces of the United State on account of an act done under color of his office or status, or in respect to which he claims any right, title, or authority under a law of the United States respecting the armed forces thereof, or under the law of war, may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States for the district where it is pending in the manner prescribed by law, and it shall thereupon be entered on the docket of the district court, which shall proceed as if the course had been originally commenced

therein and shall have full power to hear and determine the cause (Added Aug. 10, 1956 c. 1041, 19(a) 70A Stat. 626.)

SUPREME COURT RULE 20 (4) Review on certiorari-time for petitioning

The time for filing a petition for writ of certiorari runs from the date the judgement or decree sought to be reviewed is rendered, and not from the date of the issuance of the mandate (or it's equivlent under local practice.) However, if a petition for rehearing is timely filed by any party in the case, the time for filing the petition for writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or of the entry of a subsequent judgment entered on the rehearing.

TITLE VII 42 USCS 1983

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia subjects, or causes to be subjected, any citizen of the United States or other persons within the jurisdiction thereof to the deprivation of any rights privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity,or other proper proceeding for redress. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

16 USC 470 (f) Sec.

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted

undertaking in any State and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in or eligible for inclusion in the National Register. The head of any such Federal agency shall afford the Advisory Council on Historic Preservation established under sections 470v of this title a reasonable opportunity to comment with regard to such undertaking.

33 CFR Sec. 320.4 (j) (4)

In the absence of overriding national factors of the public interest that may be revealed during the evaluation of the permit application,a permit will generally be issued following receipt of a favorable

state determination provided the concerns, policies, goals and requirements as expressed in 33 CFR Parts 320-324, and the applicable statutes have been considered and followed e.g.the National Environmental Policy Act; the Fish and Wildlife Coordination Act; the Historical and Archeological Preservation Act; the National Historic Preservation Act; the Endangered Species Act; the Coastal Zone Management Act; the Marine Protection, Research and Sanctuaries Act of 1972; as amended:the Clean Water Act, and the American Indian Religious Freedom Act. Similarly, a permit will generally be issued for Federal and Federally-authorized activities; another federal agency's determination to proceed is entitled to substantial consideration in the Corps; public interest review.

TITLE 33 Sec. 650

Mississippi River below Rock Island; levee and bank protection

Any funds which are appropriated by Congress for improving the Mississippi River between Head of Passes and the mouth of the Ohio River, and which may be allotted to levees, may be expended under the direction of the Secretary of the Army, in accordance with the plans, specifications, and recommendations of the Mississippi River Commission, as approved b the Chief of Engineers, for levees upon any part of said river between Head of Passes and Rock Island, Illinois, in such manner as, in their opinion, shall best improve navigation and promote the interest of commerce at all stages of the river.

33 CFR Sec. 800.11 (b) (2) (iii)

If the property is principally of archeological value and subject to the requirements of the Archeological and Historic Preservation Act. 16 USC 469 (a)-(c), comply with that Act and implementing regulations instead of these regulations.

DEPT. of TRANSPORTATION ACT Sec. 4-(f)

It is hereby declared to be the national policy that special efforts should be made to preserve the natural beauty of the countryside and public park and recreation lands, wildlife and waterfowl refuges, and historic sites. The Secretary of Transportation shall cooperate and consult with the Secretaries of the Interior. Housing and Urban Development , and Agriculture, and with the State in developing transportation plans and programs that include measures to maintain or enhance the natural beauty of the lands traversed. After August 23, 1968, the

Secretary shall not approve any program or project which requires the use of a publicly owned land from a public park, recreation area, or wildlife and waterfowl refuge of national, State or local significance as determined by the Federal, State or local officials having significance as so determined by such officials unless (1) there is no feasible and prudent alternative to the use of such land, and (2) such program includes all possible planning to minimize harm to such park recreational area, wildlife and waterfowl refuge, or historic site resulting from such use.

IOWA RULE OF CIVIL PROCEDURE 167 (a) (c)

DIVISION VIII CHANGE OF VENUE

Rule 167. Grounds for Change

On motion, the place of trial may be changed as follows:

(a) County. If the county where the case would be tried is a party and the motion is by an adverse party, the issue being triable by a jury, and a jury having been demanded.

(c) Prejudice or Influence. If the trial judge, or the inhabitants of the county, are se prejudiced against the moving party, or if an adverse party has such undue influence over such inhabitants, that the movant cannot obtain a fair trial. The motion in such case shall be supported by affidavit of the movant and three disinterested persons, non being his agent, servant, employee or attorney, nor related to him by consanguinity or affinity within the fourth degree. The other party shall have a reasonable time to file counter affidavits. Affiant may be examined pursuant to RCP 166.

Presumption of enactment

In enacting a statute, it is presumed that:

1. Compliance with the Constitution of the state and of the United States is intended.
2. The entire statute is intended to be effective.
3. A just and reasonable result is intended.
4. A result feasible of execution is intended.
5. Public interest is favored over an private interest.

ARTICLE 609.45 THE CODE

Special venire of talesmen. When a city or town is a party in a suit, the talesmen shall not be drawn therefrom, but in such case the court shall order a special venire, or may order the talesmen drawn from the petit jury box.

Unsafe buildings, structures or building service equipment.

A. All building or structures regulated by this code and the technical codes which are structurally inadequate or have inadequate egress, or which constitute a fire hazard, or are otherwise dangerous to human life are for the purpose of this section unsafe.

Building service equipment regulated by such codes, which constitutes a fire, electrical or health hazard, or unsanitary condition, or is otherwise dangerous to human life is, for the purpose of this section, unsafe. Any use of buildings, structures or building service equipment constituting a hazard

to safety, health or public welfare by reason of inadequate maintenance, dilapidation, obsolescence, fire hazard, disaster, damage or abandonment is, for the purpose of this section, an unsafe use.

Parapet walls, comices, spires, towers, tanks, statuary and other appendages or structural members which are supported by, attached to, or a part of a building and which are in a deteriorated condition or otherwise unable to sustain the design loads which are specified in the building code are designated as unsafe building appendages.

All such unsafe buildings, structures or appendages and building service equipment are hereby declared to

be public nuisances and shall be abated by repair, rehabilitation, demolition or removal in accordance with the procedures set forth in subsection B of this Section. As an alternative, the building official or other employee or official of this jurisdiction as designated by the governing body may institute any other appropriate action to prevent, restrain, correct or abate the violation.

B. When in the opinion of the building official inadequate corrective action is being carried out to abate any nuisance, he may together with the fire marshal make a thorough investigation of any building, structure or building service equipment believed to be a nuisance as defined in this section and

they shall report their findings and recommend action required to abate the nuisance to the city council. The owners of the property on which the building or structure is situated shall be notified of the findings of the building official and the fire marshal. The notice shall contain a description of the property, the proposed action to be taken in regard to the property, and the time and place at which the property owners or their representative may appear before the city council to state their objections to the findings and to show cause why the building, structure or building service equipment does not constitute a nuisance as defined in this section.

The notice shall be by certified

letter mailed to the last known address of the property owners, or shall be personally served on the property owners by the building official or his designee or by any police officer of the city. If after a diligent search the city is unable to ascertain the location of the property owners within the city, the notice required by this subsection shall be published twice in a paper of current circulation within the city, addressed to the owners of the property and to any parties who may be interested therein, or the city may give notice by posting the notice at an enterence to such building or structure, or if it has no entrance, then at a conspicuous place thereon.

As used in this section, "property

owner" means the contract purchaser if there is one of record, otherwise the record holder of legal title as shown by the records of the Scott County auditor's office.

C. The city council, after considering the report and recommendation of the building official and the fire marshal, and all objections to their determination that a nuisance exists, may order the property owners to abate the nuisance, prescribe the manner of abatement, and fix the time within which the order shall be complied with. Notice of the order shall be given in the same manner as prescribed in sub-section B of this section.

D. If the order of abatement is not complied with within the fixed time, the

council may order such building, structure or building service equipment wrecked and the net cost thereof shall be charged against the property or the owner thereof, or both, and may be assessed as a special tax and collected in the manner provided for collection for special taxes or an action may be maintained against the owner thereof for the cost of abating the nuisance.

E. Such wrecking shall be carried on under the direction and supervision of the building official who is authorized on behalf of the city to call for bids for the performance of any wrecking operation necessary to abate said nuisance and to enter into a contract therefore with a responsible bidder making the best bid as determined

by the building official.

F. In lieu of the procedure prescribed in the preceding subsection, the wrecking of any such building or structures may be performed by the city through the public service department. In such event, any materials salvaged may be disposed of by the building official and any sum so received shall be paid to the city treasurer and credited upon the cost of wrecking said building, to be credited to such owner.

G. In an emergency, the building official and the fire marshal may order a nuisance as defined in this section removed, repaired or dismantled without prior notice to the property owners. Whenever an emergency action is taken, the cost of the action shall be assessed

as provided in subsection D of this section after notice to the property owners and hearing. (Ord. 81-A 2 (part). 1981).

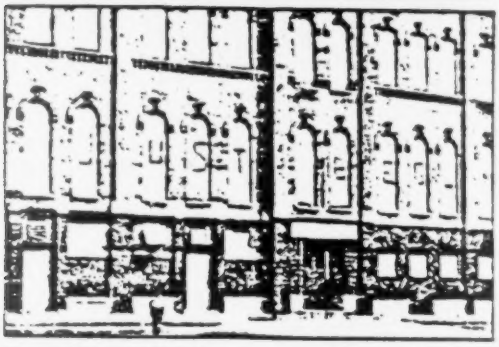
John C. Gardner, publisher
Daniel K. Hayes, editor
William K. Johnston, general manager
Daniel J. Foley, editorial page editor

Times
Serving the entire Quad-City area

COMMUNITY AGENDA '87

- ☑ 1. Develop a Quad-City strategy.
- ☑ 2. Create more Quad-City jobs.
- ☑ 3. Encourage 'can-do' leadership.
- ☑ 4. Overcome our 'image' problem.
- ☑ 5. Fund our vital institutions.

Editorial



Is the Vale worth jail?

Perhaps the threat of a jail sentence finally will give Glen Hancock sufficient incentive to get going on removing the Vale Apartments from the list of Quad-Cities' ugliest eyesores.

Perhaps.

Hancock, former owner of the historic apartments in downtown Davenport, has been dodging and ducking the city for years in its effort to get inside the building to inspect for code violations.

The Vale has been vacant for more than five years, ever since the city closed it and forced its 120 residents to leave because substandard conditions were a threat to their health and safety.

Since then, the boarded-up, five-story structure has been sitting there in all its ugliness. Hancock often has said he wants to remodel it, but has never produced even the slightest bit of evidence that might occur, and he's blocked the city each time it has tried to remove this cancer from the downtown.

Judge James Havercamp finally got tired of Hancock's messing around, and sentenced him to 10 days in jail for contempt for disobeying a court order permitting a city inspection. Hancock can avoid jail if he lets the inspectors inside.

Complicating the issue is the fact that Hancock turned ownership of the building over to his brother, who lives in California, a few months ago. Hancock says he no longer has authority to give inspectors access to the property. That sounds like more of the zigging and zagging he's been doing for these many years.

Jail may seem like a harsh way to get some action. But, then, it's more compassionate than, say, sentencing Hancock to spend 10 days in the Vale. That would be ugly.

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Quad-City Times
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COMMUNITY AGENDA '88

- ☑ 1. Implement a Quad-City strategy.
- ☑ 2. Create more Quad-City jobs.
- ☑ 3. Build on the emerging "can-do" leadership.
- ☑ 4. Project a positive Quad-City image.
- ☑ 5. Fund our schools and other vital institutions.
- ☑ 6. Revitalize our downtowns.

Cheers & Jeers

Instead of events of the past week, today's beginning-of-the-year cheers & jeers turns the thumbs on some of the highlights and lowlights of the past 12 months.

To **Vision for the Future**, whose work in preparing a strategy for the Quad-Cities probably is the most significant ongoing activity that promises community betterment. A year ago, lots of folks were saying "somebody" should do "something" about our economy. Vision has become that "somebody."

To former **Bettendorf City Administrator Jim Strieck**, for his novel approach to balancing the city budget: sticking bills in a drawer and not paying them. And to the mayor and City Council, for believing that the good money fairy would allow them to increase services every year without increasing taxes.

To those who did so much in the past year, especially the volunteers, to make the Quad-Cities a fun place. The Hardee's Golf Classic had a boffo year; the *Quad-City Times* Bix 7 run had a record field of entries; the Festival of Trees was spectacular; practically every summer weekend was a happening, and on and on. Great stuff.

To the **Davenport City Council**, for what seemed like a never-ending let-Bruce-do-it saga when it came to balancing the budget. If the council had a buck for every time it passed one to City Administrator Bruce Romer, it wouldn't have had a problem.

To progress on the 911 emergency calling system on both sides of the river. The enhanced 911 is now on line throughout most of Scott County. And Rock Island County is back on track, once the phone company dropped its inexplicable objections, toward upgrading its 911 to an enhanced version.

To **Glen Hancock**, the owner or former owner or whatever he is of the Vale Apartments in downtown Davenport, who zigged and zagged the city's mightiest efforts to get him to fix up or tear down that building and who went to jail to protect a noble principle: that he shall remove no dilapidated, rundown eyesore even after its time.

Bill Wundram

Dear Bill,

More calls, comments and profound thoughts:

■ Bright idea In a Vale of gloom

Here's a suggestion for a special contest for you to sponsor. I remember some of your past memorable events, such as 'Street-Fried Eggs,' 'Color the Bimbo Contest' and 'Jumbo Doo Rose Grower.'

We shall call the new contest, 'Name the Vale's Doomday.' Guess the date when demolition (hopefully in our lifetime) will begin on the Vale. The grand prize for the person guessing the closest date could get the toilet seat used by the former Vale resident, Ronald Reagan. When the building comes down, perhaps the bricks encompassing his room could be spray-painted red (to symbolize our national deficit) and sold or auctioned by the city.

Reagan

The revenue could go back into the coffers to repay the taxpayers the settlement awarded the owner and the $100,000 fee that demolition will cost us all.

I believe the owner has about as much hope in restoring the Vale as you do in becoming the Pope.

Rick Sundin, Davenport